

**SUPREME COURT OF NIGERIA**  
FRIDAY 15<sup>TH</sup> FEBRUARY, 2013. SC. 68/2004  
**CORAM:- M. MOHAMMED, M. S. MUNTAKA-  
COOMASSIE, S. GALADIMA, N. S. NGWUTA,  
S. S. ALAGO, JJSC**

1. NWANKWO OGUANUHU  
2. OBIORA OGUANUHU ..... APPELLANTS  
3. GILBERT OGUANUHU  
AND  
DR. EMMANUEL I. CHIEGBOKA ..... RESPONDENT

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APPEALS - Reply brief - Purpose - This is not meant to be repetition of arguments in appellant's brief - But a reply to respondent's brief (H1)

LAND LAW - Title - Proof - Onus is on plaintiff to prove his case on his own strength - And not on weakness of adverse party - Save where defence case supports plaintiff's title (H2)

COURTS - Customary court's judgment - Appraisal of - It is the substance and not the form of the judgment - That must be considered - So as not to undermine the real essence therein (H3)

COURTS - Customary court - Procedure - Strict rules of pleadings and application of Evidence Act - Are not observed in the court - But decision therein must be based on common sense (H4)

COURTS - Evidence - Evaluation - Trial court has primary duty to ascribe probative value - On evidence placed before it - But appellate court steps in - When trial court fails to perform the duty (H5)

EVIDENCE - Admission - Definition - By s. 19 E. A. - It is oral or documentary statement - That suggests any inference as to fact in issue - Which must be unequivocal and not based on misapprehension (H6)

EVIDENCE - Beneficial evidence - Use - Plaintiff is not to utilize both

beneficial and non beneficial evidence - As he is only permitted to take the beneficial evidence - To reinforce his case (H7)

### **FACTS**

This matter involved declaration of title to a customary Right of Occupancy to a piece of land known as “Ana Ukpaka Ehulie” located at Ezioka, Esuofia. The land in dispute was given to plaintiff/respondent as a gift under customary law method of “Ikpe ekpe” like as a will by his father. The land once belonged to the brother of respondent’s father. A condition was attached to the gift. The condition was that respondent should pay to his father’s eldest son a sum of money referred to as “Nnu Afia.” Respondent made the payment as ordered by their father. Exhibit ‘A’ a customary arbitration and a survey plan of the land were in evidence at the trial Customary Court.

Defendants’/appellants’ stand was that the land in dispute is not part of the land given to respondent. The Customary Court heard the parties, visited the land together with parties and witnesses and in its decision, gave judgment for respondent. Appellants appealed to the Chief Magistrate Court. The court reversed the decision of the Customary Court and allowed the appeal. Respondent filed appeal to the High Court, which appeal was allowed. The decision of the Chief Magistrate Court was set aside and the judgment of the Customary Court was restored. Appellants appealed to the Court of Appeal Enugu Division. The court dismissed the appeal and confirmed the judgment of the High Court. Aggrieved further, appellants filed appeal to Supreme Court.

### **ISSUES FOR DETERMINATION**

*“3.1. The first issue for determination is whether the Plaintiff can take advantage of the evidence of the Defendants favourable to him to prove his title.*

*3.2. The second issue for determination is whether the land in dispute is part of Ezeabalam’s land granted to the Plaintiff/Respondent by his father.*

*3.3 The 3rd issue for determination is whether from totality of evidence of the parties, whether Plaintiff proved his root of title.*

*3.4 The 4th issue for determination is whether the decision of the trial Customary Court that the land in dispute is part of Ezeabalam’s land granted to the Plaintiff/Respondent and which decision was up-*

*held by the High Court and Court of Appeal is one that qualifies to be treated favourably with regards to the policy of the Supreme Court not to disturb such concurrent findings of two lower courts.”*

## **HELD** (Unanimously dismissing the appeal per **GALADIMA JSC**)

*APPEALS - Reply brief - Purpose*

**1. I must observe that the Appellants filed a Reply Brief of argument. A reply brief is not meant to be a repetition of the arguments in the Appellants’ Brief. It is not an opportunity to re-emphasize the arguments in the Appellants’ Brief. On the contrary, a Reply Brief, as the term implies, replies to the Respondent’s brief. (p. 529 E)**

*LAND LAW - Title - Proof*

**2. Most importantly, in a claim for a declaration of title to land as in this case, the onus is on the plaintiff to prove his case. In doing this he relies on the strength of his case and not on the weakness of the adverse party’s case. It is only where evidence of traditional history is inconclusive to establish Plaintiff’s title that traditional history must be tested by reference to the fact in recent years as established by evidence. However there is nothing wrong for a Plaintiff to take advantage of any evidence adduced by the defence which tends to establish the plaintiffs title. (p. 531 C)**

*Customary court’s judgment - Appraisal of*

**3. Learned Justices of the court below, also correctly restated the principle of law guiding the appraisal of the Judgment of a customary court, like the trial Court in this case. The principle is that in appraising such Judgment, it is the substance and not the form of same that must be considered, so as not to undermine the real purport and essence of the Judgment. (p. 531 G)**

*Customary court - Procedure*

**4. Strict rules of pleadings and application of provisions of the Evidence Act are not observed in those customary or Native courts. Their decisions however must be based on common sense and reasonableness of their findings.** (p. 532 A)

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*Evidence - Evaluation*

**5. Findings made by the trial court are based on the evidence adduced before it. It is the primary duty of the court to ascribe due probative value on the evidence placed before it, when the trial court fails to perform this duty, then an appellate court can step in to perform such function. Even so, the appellate court is cautious when performing this functions and can only do so when the demeanour of witnesses is not in question.**

D (p. 532 B)

*EVIDENCE - Admission - Definition*

**6. As to the principle pertaining to admission Section 19 of the Evidence Act defines it as “a statement Oral or documentary which suggests any inference as to any fact in issue or relevant fact and which is made by any person”. But such admission must be clear and unequivocal and not based on misapprehension.** (p. 533 A)

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*Beneficial evidence - Use*

**7. It is not the law that the plaintiff must utilize both the beneficial and the non-beneficial evidence. The law only permits him to take the evidence beneficial to him to re-enforce his case.**

G (p. 536 E)

**REPRESENTATION**

CHIEF ONYEMENAM ESQ. with F. A. Ogbuti (Mrs.), Philips Ada-Odogwu Esq., for the Appellants

H B. S. ONUGBU Esq., for the Respondent

**CASES REFERRED TO**

Motunwase v. Sorungbe (1988) 5 NWLR (pt. 92) 90

Bello v. Eweka (1981) 1 SC 101

Kodilinye v. Odu (1935) 2 WACA 336  
 Akinola v. Oluwa (1962) 1 ALL NLR 224  
 Nwagbo v. Ibeziako (1972) 2 ECSLR 335  
 Adenle v. Oyegbade (1967) NMLR 136  
 Adebambo v. Oluwosago (1985) 3 NWLR (pt. 11) 207  
 Idundun v. Okumagba (1976) 9-10 SC 227  
 Piaro v. Tenalo (1976) 12 SC 31  
 Jules v. Ajani (1980) 5-7 SC 97  
 Ngene v. Igbo (2000) 4 NWLR (pt. 651) 131  
 Madubuonwu v. Nnalue (1992) 8 NWLR (pt. 260) 440  
 Olatunji v. Adisa (1995) 2 SCNJ 90  
 Okafor v. Idigo (1984) 1 SCNLR 481  
 Ayorinde v. Sogunro (2012) 50 NSCQR 553

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**STATUTE REFERRED TO**

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Evidence Act, s. 135 (1)(2)

**LEAD JUDGMENT BY GALADIMA JSC**

This is an appeal against the Judgment of Court of Appeal, Enugu Division, delivered on Thursday 13th February 2003. This matter culminating in the further appeal to this court, has unfortunately chequered history. This is manifested from the relevant background facts exposed hereunder.

The Respondent herein, as plaintiff first instituted this suit at the Mbamisi customary court claiming the following reliefs:

*“1. A declaration of title to a Customary Rights of Occupancy to a piece of Land known as a “Ana Ukpaka Ehurie” situated at Ezioka Isuofia within the territorial limit of the Court.*

*2. N1,500.00 being damages for wrongful entry into the said plaintiffs land by the Defendants.*

*3. An order of court to prevent the Defendants further entry into the said plaintiffs land.”*

The Mbamisi Customary Court gave Judgment in favour of the Plaintiff but the Appellants appealed to the Magistrate Court where the Judgment was reversed in their favour. The High Court then reversed the decision of the Magistrate Court. The Appellant appealed against the Judgment of the High Court to the Court of Appeal, which again decided in favour of the Respondent. The Respondent

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is therefore successful at the two Lower Courts.

The Appellants dissatisfied with the decision of the Court of Appeal, appealed to this Court. They accompanied their Notice of appeal with five grounds of appeal with the particulars. Three issues have been identified for determination of the appeal by the Appellants. They read as follows:-

*“3.2. The first issue for determination is whether the land in dispute is part of Ezeabalem’s land.*

*3.3. The second issue for determination flows from the first; that is, even if the said land is part of Ezeabalem’s land did the plaintiff prove his root of title to the original settler and how he derived title from him.*

*3.4. The third issue for determination is this:- If the Plaintiff failed to prove his root of title could he take advantage of the evidence of the Defendants to reinforce non-existing root of title and did he in fact take any advantage.*

The Respondent on his part has formulated four issues for determination as follows:-

*“3.1. The first issue for determination is whether the Plaintiff can take advantage of the evidence of the Defendants favourable to him to prove his title.*

*3.2. The second issue for determination is whether the land in dispute is part of Ezeabalam’s land granted to the Plaintiff/Respondent by his father.*

*3.3 The 3rd issue for determination is whether from totality of evidence of the parties, whether Plaintiff proved his root of title.*

*3.4 The 4th issue for determination is whether the decision of the trial Customary Court that the land in dispute is part of Ezeabalam’s land granted to the Plaintiff/Respondent and which decision was upheld by the High Court and Court of Appeal is one that qualifies to be treated favourably with regards to the policy of the Supreme Court not to disturb such concurrent findings of two lower courts.”*

Having been served with the Respondent’s Brief of Argument, the Appellants filed a Reply Brief of Argument. Having carefully examined the issues identified for determination of this appeal by the parties, I am of the firm view that the four issues distilled by the Respondent in his Brief of Argument are quite helpful for determination of this appeal. I shall consider the issues seriatim in the following

order: However, arguments on issues 3 and 4 shall be taken together.

Arguing the first issue, Appellants' learned counsel maintained that going by the evidence at the trial the Respondent did not know anything about the land in dispute. In other words, that the Respondent did not give evidence of his root of title. It is contended that there was no evidence, as stated by the lower court that the land in dispute belongs to or is part of Ezeablam's land. That the evidence available was to the contrary, that is, that the land in dispute is not part of Ezeabalam's land. B

On the 2nd issue Appellants' Counsel has contended that the Respondent has not proved his root of title. C

On the 3rd and 4th issues, learned Counsel for the Appellant submitted that if the Respondent's root of title fails in that case there is nothing to be reinforced, as you cannot put something on nothing and expect it to stand. Regarding the treatment of evidence of 2nd Defendant as an "admission" by the court below, it is submitted that what happens to ordinary evidence happens to "admission". In other words, if there was nothing on the imaginary scare of the Respondent herein, "admission" by the Appellants will not make any difference. That in a declaratory claim as in this case, the law is that where the court is called upon to make such declaration, it is incumbent on the party claiming to be entitled to the declaration to satisfy the court by his evidence and not by admission of the defendant that he is so entitled. That the court has discretion to grant or refuse the declaration and the success of a claimant in such an action depends entirely on the strength of his own case and not on the weakness of the defence. Counsel cited in aid of his submissions the case of MOTUNWASE V. SORUNGBE (1988) 5 NWLR (Pt. 92) 90 at 102 which followed BELLO v. EWEKA (1981) 1 SC 101 AT 102. Learned counsel finally concluded his submissions on these two issues that the traditional history as stated by the 2nd defendant from which the plaintiff was supposed to have taken advantage of stated categorically that Ezeabaram's land is not part of the land in dispute, and if his evidence of traditional history is preferred and believed that too must be believed, because it was part of his run-down of his traditional history. D E F G H

Respondents' argument on the issues is as follows:-

On the 1st issue same as Respondent's 3rd issue, learned coun-

sel for the Respondent has submitted that the learned Justices of the two lower courts (High Court and Appeal Court) were right in holding that the Respondent was entitled to rely on the traditional history and other pieces of evidence of the Appellants favourable to him in proof of his title. Respondent in support of this submission relies on  
 B the sharp cutting edges of the learned High Court Judge's ratio  
 C decidenti at page 168 lines 3 - 13 of the record, quoted extensor, in  
 D the Respondent's brief of argument. Similarly the Court of Appeal  
 gave its reasons on page 265 paragraph 5 of the Records for agreeing with the High Court. Learned Counsel has submitted that this  
 instant case is on all fours with cases of KODILINYE V. ODU (1935) 2  
 WACA 336; JOSIAH AKINOLA V. OLUWA (1962) 1 ALL NLR. 224  
 at 225, NWAGBO V. IBEZIAKO (1972) 2 ECSLR 335, ADENLE V.  
 OYEGBADE (1967) NMLR 136 ADEBAMBO V. OLUWOSAGO  
 D (1985) 3 NWLR (PT. 11) 207 at 208; and therefore the lower courts  
 were right to rely on beneficial and favourable evidence of the 2nd  
 Defendant of traditional history and other evidence supplied by the  
 other Defendants in proof of Respondent's root of title.

It is submitted that the 2nd Defendant had made a clean breath  
 E of traditional history of how land that should go to Ezeabalam finally  
 went to Chiegboka who willed it to the plaintiff conditionally; and  
 that condition was met. This beneficial evidence of 2nd Defendant,  
 as submitted by Respondent's counsel, must be treated as admis-  
 F sions upon which the Plaintiff is entitled to rely in further re-enforce-  
 ment of his case.

On the 2nd issue, which is Appellant's 1st issue, the Respon-  
 dent, has maintained that the land in dispute is a grant to him by his  
 father when he made a "will" ("ike-ekpe") and he met the condition  
 G by paying the sum of money referred to as "Nnuafia" to his Uncle  
 Nwokoye Chiegboka. The Respondent referred to the piece of evi-  
 dence of the 2nd Defendant, who was the spokesman of the Defen-  
 dants, and never declared a hostile witness, admitted that the Plaintiff  
 paid this contingent money to his father's eldest son.

H On the 3rd issue of the Respondent which is the same with the  
 Appellants' second issue, the Learned Counsel for the Respondent  
 submitted that the Appellants have failed to prove their root of title  
 whereas the Respondent and his witnesses did. That the PW2 gave  
 evidence at the trial of how the Respondent got Ezeabalam's proper-



ties from his father. He went ahead to tell the court the Appellants' father claimed the land in dispute because the woman whom the land was given for cultivation was the wife of Nwokoye the forefather of the Defendants.

It is submitted by the Respondent's counsel that the Respondent having traced his title to the land in dispute to Ezenwoke, whose original title to the land in dispute has been established; the onus is now on the Appellants to show that their own is of such a nature as to oust that of Ezenwoke, the original owner. Having failed to discharge such onus, the Appellants are not entitled to right of possession. Respondent relies on the case of ADEBAMBO V. OLUWOSOGO (supra). It is further submitted that the customary trial court on its majority Judgment found at the visit to locus in quo that the Plaintiff's residence is contiguous to the land in dispute. That this view was supported by the minority Judgment which is relied upon by the Appellants. It is observed that the court of Appeal taking this point correctly, held that this is one of the evidential ways of proving title to land as expounded by the locus classicus of IDUNDUN V. OKUMAGBA (1976) 9-10 SC 227 and PIARO v. TENALO (1976) 12 SC 31. In the light of the foregoing the Respondent has urged this court to hold that the Respondent has proved his title to the land in dispute.

***I must observe that the Appellants filed a Reply Brief of argument. A reply brief is not meant to be a repetition of the arguments in the Appellants' Brief. It is not an opportunity to re-emphasize the arguments in the Appellants' Brief. On the contrary, a Reply Brief, as the term implies, replies to the Respondent's brief.***

The Respondent Brief has joined issues with the Appellants' brief in this case, they need not repeat the issue joined either by emphasis or expatiation. Good pasta needs very little or no embellishment, so the saying goes. Appellants' Reply Brief suffer these shortcomings. I shall however salvage some relevant issues sought to be addressed in response to the Respondents brief in the course of consideration of this appeal, particularly, the issue on whose side lies the onus of proof of title to the land.

As I have stated above the four issues raised by the Respondent are quite apt and these will determine the appeal. The first issue formulated by the Respondent is identical with issue 4th issue formu-

lated by the Appellants whilst Respondent's issue 2 is quite similar to issue 1 of the Appellants identified for determination of the appeal. Respondent's issue 3 is the same as issue 4 of the Appellants. Respondent's 4th issue is similar to 3rd issue formulated by the Appellant.

B Since preference has been accorded Respondent's formulation of the 4 issues same shall be treated serially, in the next following paragraph or two. However the relevant claims of the parties borne out of their testimony and those of the witnesses, set out hereunder will not be out of place, for the proper determination of this appeal.

C The Respondent as plaintiff gave the following testimony. That his father, by the customary process or method of "Ike ekpe," a form of a "will" made a gift of a piece of land to him. This land once belonged to Ezeabalam, the brother of the Respondent's father. The Respondent fulfilled a condition attached to the gift by paying to his father's

D eldest son - Nwokoye Chiegboka a certain sum of money referred to as "Nnu Afia" The reason was that his father once gave out his eldest son's daughter in marriage and he kept the bride price all to himself. However before the gift, Chiegboka had allowed one Enemuo Okoye,

E to be farming on the land. The plaintiff duly paid his senior brother the sum of money prescribed by their father - Chiegboka. He tendered Exhibit "A" containing a decision of Amala Isuofia union on a dispute between the 2nd Defendant and himself relating to the land. He also tendered Exhibit "B" which is the survey Plan of the land.

F The case of the Defendants (Appellants herein) was set out by the 2nd Defendant in his testimony. Under oath, he maintained that Ezenwoke was the ancestor of both parties. Ezenwoke was the father of Okannaha and Efo. Ezeabalam was the father of Okannaha,

G Obiefuna, Omenife and Ekwubena. Chiegboka was the Respondent's father. Obiefuna begat Chiegboka. Omenife (Obiefuna's brother) begat Okoye and he (Okoye) begat Oguanuhu (father of the Defendants (Appellants herein)). Ekwebene (One of Okannaha's Sons) begat Uzuiji. Then the three surviving sons of Okannaha that is Obiefuna,

H Omenife; and Ekwebena fought over the portion that should have gone to Ezeabaram and same went to Chiegboka. As I have said before it was Chiegboka who offered a gift of the piece of land of Ezeabaram (now in dispute) to the Plaintiff, by the customary Law practice or method of "ike ekpe" It was a conditional gift subject to

the Respondent herein agreeing to pay a sum of money, described as “Nnu Afia” to Nwoke Chiegboka, the Respondent’s senior brother. The 2nd Defendant (2nd Respondent herein) stated clearly that he was present before the family when the Respondent gave the said sum of money to Nwoke Chiegboka. He maintained however, that Ezeabalam’s land given to the Plaintiff was not part of the land in dispute. B

The foregoing is the summary of the case put up by the parties. These are raw facts garnered from the Records and are the fountain-head of the legal principles of law I shall apply in the resolution of the appeal. And what are these principles that will serve as a guide. C Some have been admirably captured in the Judgment of the Court below.

***Most importantly, in a claim for a declaration of title to land as in this case, the onus is on the plaintiff to prove his case. In doing this he relies on the strength of his case and not on the weakness of the adverse party’s case. It is only where evidence of traditional history is inconclusive to establish Plaintiff’s title that traditional history must be tested by reference to the fact in recent years as established by evidence. However there is nothing wrong for a Plaintiff to take advantage of any evidence adduced by the defence which tends to establish the plaintiffs title.*** See the following cases: KODILINYE V. ODU (1935) 2 WACA 336; NWAGBO V. IBEZIAKO (1972) 2 ECSLR 335; AKINOLA V. OLUWO (1962) 1 SCNLR 1; JULES V. AJANI (1980) 5-7 SC. 97; NGENE V. CHIKA IGBO (2000) 4 NWLR (PT. 651) 131 at 142. MADU BUONWU V. NNALUE (1992) 8 NWLR (PT. 260) 440 at 444; MAKNAJUOLA OLATUNJI V. MUIBI ADISA (1995) 2 SCNJ 90 at 102, OKAFOR IDIGO (1984) 1 SCNLR 481 at 512 and AYORINDE V. SOGUNRO (2012) 50 NSCQR 553 at 570. F

***Learned Justices of the court below, also correctly restated the principle of law guiding the appraisal of the Judgment of a customary court, like the trial Court in this case. The principle is that in appraising such Judgment, it is the substance and not the form of same that must be considered, so as not to undermine the real purport and essence of the Judgment.*** See: AJAGUNJEUN v. OSHO (1977) 5 SC 89; KPISHIKWUSU V. UDO (1990) 2 SCNJ 4 and EKPA V. UTONG G

532 Oguanuhu v. Chiegboka (2013) 1-2 KLR Galadima JSC  
(1991) 6 NWLR (PT. 197) 258.

***Strict rules of pleadings and application of provisions of the Evidence Act are not observed in those customary or Native courts. Their decisions however must be based on common sense and reasonableness of their findings.*** See: *EFI v. ENYUFUL* (pt. 954) 14 WACA 424; *CHIEF ASUQUO & ORS V. CHIEF ETIM AKPAN* (1991) 6 NWLR (PT. 197) 258 AT 278; *OLUNSINA V. OGUNLEYE* (1994) 5 NWLR (pt. 346) 675.

***Findings made by the trial court are based on the evidence adduced before it. It is the primary duty of the court to ascribe due probative value on the evidence placed before it, when the trial court fails to perform this duty, then an appellate court can step in to perform such function. Even so, the appellate court is cautious when performing this functions and can only do so when the demeanour of witnesses is not in question.*** See: *ATOLAGBE v. SHORUN* (1985) 1 NWLR (PT. 2) 360, *NARUWA & SONS LTD. V. N.B.T.C. LTD.* (1989) 2 NWLR (PT. 106) 730. *OKAFOR V. IDIGO* (supra).

Otherwise, the corollary to the above principle is the presumption that the decision of a trial court on facts is correct. An appellate court cannot and it ought not to substitute its own view of fact for those of the trial court which heard evidence and watched the demeanour of witnesses as they testified, see: *OHANAKA v. ACHUGWO* (1998) 9 NWLR (PT. 564) 37.

However, a trial court in the course of evaluating evidence must put all evidence with probative value adduced by each side on an imaginary scale to see which side the scale tilts. See: *MOGAJI V. ODOFIN* (1978) 4 SC. 91 *BELLO V. EWEKA* (supra). An appellate court will only interfere with findings of fact of a trial court if it is shown that the conclusion reached is not in tune with the current or flow of evidence or that the decision was wrong or perverse.

As it pertains to the concurrent findings of two lower courts an appellate court will not interfere unless there be exceptional circumstances to justify such interference. Nor would there be interference with the Judgment of two lower courts unless there are substantial errors in law or procedure leading to miscarriage of justice. See: *AKINLOYE V. EYINOLA* (1968) NMLR 92; *ENANG V. ADU* (1981) 11 - 12 SC 25; *OHANNAKA V. ACHUGWO* (supra) *OKULATE V.*

AWOSANYA (2000) 1 SC. 107.

**As to the principle pertaining to admission Section 19 of the Evidence Act defines it as “a statement Oral or documentary which suggests any inference as to any fact in issue or relevant fact and which is made by any person”. But such admission must be clear and unequivocal and not based on misapprehension.** See: MARIDEX TRUST LTD. V. NIMB LTD. (2001) 4 SC (PT. 1) 25. Facts admitted need not be proved. See S. 75 of the Evidence Act and the cases of OKPARAEKE V. EGBUONU (1941) 7 WACA 53 at 55; DIM V. AFRICAN NEWSPARERS (1990) 3 NWLR (PT. 139) 392 UMWENWA V. UMWENWA (1987) 4 NWLR (PT. 65) 407 and UGO V. OBIKWE (1989) 1 NWLR (Pt. 99) 566. B  
C

I have observed that the relevant issues of the parties identified for determination of this appeal are inextricably and intimately related. Though they have been argued seriatim, I am of the firm view that the issues can be conveniently taken together and relate them to the facts of the case. D

May I first observe that both the majority members of the Customary Court and the Learned Appellate High Court Judge recognized and identified the only issue in controversy between the Respondent and the Appellants? Viz - E

*“Whether the land in dispute was part of the land of Nwokoye Ezeabalam or not”*

By the provision of Section 135 (1) and (2) of the Evidence Act on burden of proof, it is stated: F

(1) *“Whoever desires any court to give Judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.*

(2) *When a person is bound to prove the existence of facts, it is said that the burden of proof lies on that person.”* G

In his statement of claim, the Respondent as plaintiff sought for a declaration of legal right to title to the land in dispute. In law the general burden of proof lies on the Respondent because he is the one asserting that the land in dispute belongs to him. H

From the provision of section 135 of Evidence Act, therefore in a claim for declaration of title, the general rule is that the plaintiff must depend or succeed not upon the weakness of the defence.

From on set I reproduce vividly the case of the parties. For

emphasis I shall recall their evidence. The plaintiff testified that his father Chiegboka Obiefuna made a gift of the land in dispute to him. The land once belonged to Ezeabalam, the brother of the plaintiff's father. The gift was made contingent upon the plaintiff paying a sum of money referred to as "Nnu-Afia" to his senior brother - Nwokoye Chiegboka, and this he did.

The 2nd Defendant testified on Oath as DW1. As clearly manifested in the transcript record of appeal, his testimony was quite detailed. It was reproduced above. However the recapitulation of his testimony is that Ezenwoke was the ancestor of both parties. He begat Okannaha and Efo. The children of Okannaha were Ezeabalam Obiefuna, Omenife and Ekwebene. Ezeabalam predeceased his father. Obiefuna begat Chiegboka plaintiff's father. Omenife begat Okoye who begat Oguanuhu, father of the Defendants. The three sons of Okannaha namely Obiefuna, Omenife and Ekwoebene shared their father's land. Struggle ensued between Chiegboka and Ekwebene over the portion that should have gone to Ezeabaram and same went to Chiegboka who now "willed" or gave the land through "Ike ekpe" traditional system to the Plaintiff. Plaintiff paid a sum of money "Nnu Afia", to Nwokoye Chiegboka - Plaintiffs eldest brother. The 2nd Defendant was an eye witness and he was present before the whole family when the plaintiff paid the contingent sum of money which other defendants confirmed. This supports the plaintiff's evidence that a piece of land was given to him by his father and he fulfilled the condition attached as aforesaid. Above evidence also traced the traditional history of the parties to their progenitor - Ezenwoke. The evidence also depicts how Ezeabalam's properties went to Chiegboka who "willed" the land to the Plaintiff.

I agree with the view expressed by learned Justices of the court below that the evidence of the 2nd Defendant must be treated as an "admission" upon which the plaintiff is entitled to rely as further reinforcement of his case. It is trite law that what is admitted need no further proof. By his admission, the 2nd Defendant Obiora Oguanuhu, and other defendants, having given evidence in support of the plaintiff's testimony this makes the burden placed on him light.

This has aided the plaintiff's case. The authority of *ADENLE V. OYEGBADE* (1967) NMLR 136 is significant to the position of the general rule of burden of proof vis-à-vis the legal implications of

bindness of admission on party in our adversarial system of litigation. The case is in respect of a declaration of title to a certain piece of land wherein the defendant admitted that the land originally belonged to the Plaintiffs family. The land had also been in occupation of the defendant and his father by virtue of grant from Plaintiffs family, the nature of which the defendant re-iterated, was outright. The trial court held in favour of the defendant as against the Plaintiff whom the court held had greater burden of proof. On appeal, the Supreme Court reversed the decision and held:

*“Where land is admitted to have belonged to the plaintiff originally, it is for the defendant to prove by what right he claims to have become the owner in place of the plaintiff.”* See also EZEMBA V. IBENEME (2004) 7 SC (PT. 1) 45.

It goes without any further gainsaying that the evidence of the 2nd Defendant as recapitulated above favoured the Plaintiff/Respondent herein) in respect of traditional history of both parties. The plaintiff is entitled to take advantage of the evidence adduced by the 2nd Defendant which proved clearly the traditional history and established the plaintiff’s title. The trial Customary Court carefully listened to the parties and their witnesses. Thereafter, they visited the locus in quo with the parties in attendance to view the land. The court found that the land in Exhibit “B” is part of Ezeabalam’s land. This finding is supported by evidence on record. There was also finding of fact that the land in dispute is contiguous to the abode of the Plaintiff. This is one of the five ways of proving title to land. By proof of possession of connected or adjacent land, in the circumstances rendering it probable that the owner of such connected adjacent land would in addition, be the owner of the land in dispute: See: IDUNDUN V. OKUMAGBA (supra) PIARO V. TENALO (1976) 12 SC 1 and OWOREGIE V. IDUA EMWANYE (1985) 2 NWLR (PT. 5) P. 41 and AYORINDE V. SOGUNRO (supra). The findings of fact by the trial Customary Court have not been shown to be perverse or wrong. I refer to the following pronouncement of Coker, JSC (of Blessed Memory) in OWUBE V. NDUBE (1972) 3 SC 106:

*“This case easily revolves itself on facts. The findings of the learned trial Judge who saw and heard the witnesses are amply supported by the evidence which he accepted. Before us on appeal feeble attempts were made to disparage those findings; but we are satisfied*

*that these are not sufficient to warrant our interfering with the considered judgment of the learned trial Judge.”*

The court below agrees with the plaintiff (Respondent herein) that he has traced the traditional history of the land in dispute up to the commonly accepted original ancestral owner and father of the parties. The supply of beneficial evidence of traditional history by the 2nd Respondent, which the plaintiff is allowed in law, to regard as admissions, helps to re-enforce his root of title.

It is wrong for the Appellants to argue that the Appellate High Court and the Court of Appeal should have used only the evidence of the Plaintiff which they claimed was unsatisfactory in making a decision against the plaintiff without considering the admissions of the Defendants which was beneficial and supports plaintiff’s case. The admissions in evidence, as that given by the 2nd Defendant, are allowed as proof in a claim for a declaration of title to a customary right of occupancy. This is a matter that was initiated at the customary court where rules of pleadings and strict applications of Evidence Act “are not of moment”. Its decision must only be based on common sense and good reason. See: *NDU V. UMUDIKE PROPERTIES LTD.* (2008) 10 NWLR PT. 1094 24 at 26 *OGUNSINA V. OGUNLEYE* (supra) Chief *ASUQUO V. CHIEF ETIM AKPAN* (supra).

***It is not the law that the plaintiff must utilize both the beneficial and the non-beneficial evidence. The law only permits him to take the evidence beneficial to him to re-enforce his case.***

Finally when all evidence of the parties are placed on the imaginary scale, the plaintiffs case and the admissions or favourable evidence of the 2nd Defendant and the other Defendants, will surely make the plaintiffs case outweigh that of the Defendants and therefore tilt up the balance in his favour and earn him the declaratory reliefs.

In view of the foregoing, I have no reason to disturb the concurrent findings of the customary trial court and the two lower courts (Appellate High Court and the Court of Appeal). Accordingly I dismiss this appeal in its entirety as it lacks merit. The Judgment of the Court of Appeal is hereby affirmed. I make no order as to costs, in the circumstances of this case.



**MOHAMMED JSC**

This appeal is against the judgment of the Court of Appeal Enugu delivered on 13th February, 2003 dismissing appeal from the judgment of High Court of Anambra State which set aside the decision of Magistrate Court which in turn set aside the decision of Mbamisi customary court in a land dispute between members of the same family in favour of the Plaintiff/Respondent in this appeal. The case arose from the customary court, to the Magistrate Court, to the High Court, all in Anambra State before coming to the Court of Appeal. B

The case involved declaration of title to a customary Right of Occupancy to a piece of land known as “Ana Ukpaka Ehulie” located at Ezioka, Esuofia. The land in dispute was given to the Plaintiff as a gift under customary law method of “Ikpe ekpe” like as a will by his father. The land once belonged to the brother of the plaintiff’s father. A condition was attached to the gift. The condition was that the Plaintiff should pay to this father’s eldest son Nwokoye Chiegboka a sum of money referred to as “Nnu Afia.” The Plaintiff made the payment of the money to his elder brother as ordered by their father. Exhibit ‘A’ a customary arbitration by members of union and a survey plan of the land were in evidence at the trial Customary Court. C D E

The Defendants now Appellants’ stand was that the land in dispute is not part of Ezeabalam’s land given to the Plaintiff. The Customary Court heard the parties, visited the land together with parties and witnesses and in its decision 2 - 1, gave judgment for the Plaintiff. F

At the Chief Magistrate Court on appeal against the judgment of the trial Customary Court no reasons were given for allowing the appeal and setting aside the judgment of the trial Customary Court and entering judgment for Defendant. The High Court on appeal against the decision of the Chief Magistrate Court allowed the appeal, set aside the judgment of Chief Magistrate Court and restored the judgment of the trial Court. It was that judgment that was affirmed by the Court of Appeal which decision is now on further appeal in this Court. The main issue is whether the Plaintiff now Respondent proved his title at the trial court as affirmed by the High Court and the Court of Appeal. The answer is in the affirmative. Even the evidence of DW1 supported the case of the Plaintiff/Respondent. The identity of the land was not in dispute at all as asserted G H

by the Appellants.

It is for the above reasons that I entirely agree with my learned brother Galadima JSC in his judgment that this appeal must fail. Accordingly, I also dismiss the appeal and abide by the orders made in the lead judgment including the order on costs.

B

### **MUNTAKA-COOMASSIE JSC**

I have read before now the judgment of my learned brother Galadima JSC just delivered with which I entirely agree.

C

For the same reasons so elegantly canvassed and relied upon in the judgment, which, I with tremendous respect adopt as mine, I also dismiss the appeal in its entirety. Truly the Appeal lacks merit. It is not usual for the Supreme Court to disturb the findings of the two lower courts unless and until they are perverse. I affirmed the judgment of the lower court Enugu Division. No order as to costs.

D

### **NGWUTA JSC**

I have had the opportunity of considering the exhaustive reasons articulated by My Lord, Galadima, JSC and I am in agreement with the views which he expressed. I desire, however, to add only a few brief observations.

E

The 4th issue formulated by the Respondent in his brief of argument reads thus:

F

*“Whether the decision of the trial Customary Court that the land in dispute is part of Ezeabalam’s land granted to the plaintiff/respondent and which decision was upheld by the High Court and Court of Appeal is one that qualifies to be treated favourably with regards to the policy of the Supreme Court not to disturb such concurrent findings of two lower Courts.”*

G

At the hearing of the appeal, learned Counsel for the appellant contended that since there is a break in the chain of concurrency from the Magistrate’s Court to the Court of Appeal, the decision appealed against ought not to be treated as concurrent findings of the two Courts below.

H

In other words, the Court should upset the findings of the two Courts below without the need for exceptional circumstances in the

form of miscarriage of justice or a serious violation of some principle of law or procedure. See *Enang v. Adu* (1981) 11-12 SC 25 at 42; *Lokoyi v. Oloja* (1983) 8 SC 61 at pp 58-73; *Ojumu v. Ajao* (1983) 9 SC 22 at p.53; *Paul Nwadike & ors v. Cletus Ibekwe & ors* (1987) 12 SC 14 at 18.123

As between the Customary Court and the Magistrate's Court the findings are divergent and not concurrent. But this Court has no jurisdiction to hear and determine appeal from the decision of either of the two Courts. A concurrent finding relating to the finding of fact in this context means a finding made by the High Court and affirmed by the Court of Appeal. It does not relate to the Customary Court or the Magistrate's Court.

The judgment appealed against is based on findings of fact by the High Court in its appellate jurisdiction as affirmed by the Court of Appeal. In keeping with the practice of this Court the said judgment will not be disturbed without proof of special circumstance.

For the above and the fuller reasoning in the lead judgment, I also dismiss the appeal as devoid of merit. Parties to bear their costs.

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### **ALAGOA JSC**

I read before now and in draft form the judgment just delivered by my learned brother Galadima JSC and I am also of the view that the appeal lacks merit and should be dismissed.

Available evidence at the trial showed that the Respondent proved his title to the land the identity of which was not in dispute as the Appellants asserted. I also dismiss the appeal while abiding by the orders made in the lead judgment including order on costs.