

SUPREME COURT OF NIGERIA
FRIDAY 12TH JULY, 2013. SC. 219/2003
CORAM:- I. T. MUHAMMAD, J. A. FABIYI, S. GALADIMA,
M. D. MUHAMMAD, S. S. ALAGOA, JJSC

1. ALHAJI OSENI OLANIYAN
2. CHIEF BURAIMOH
DUNMOYE BALOGUN
3. ALABI LASISI APPELLANTS
4. J. ADIO
5. LATEEF ADELEKE
AND
CHIEF MRS. E. T. FATOKI RESPONDENT

APPEALS - Perverse finding - Meaning - Decision is perverse when it runs counter to pleadings and evidence on record - Or where the affected court considered matters - Which it ought not to have taken into account (H1)

APPEALS - Judgment - Interference - Basis - It is necessary to determine whether or not the judgment - Had evolved from pleadings and evidence of parties - And where found to be perverse - Whether miscarriage of justice has been occasioned (H2)

LAND LAW - Trespass - Damages - Plaintiff who claims damages and injunction for trespass - Puts his title in issue - And succeeds on proving that he has better title than defendant (H3)

LAND LAW - Title - Proof - Mere production of deed of conveyance - Does not automatically establish title - As court must inter alia be satisfied - That the conveyance is valid and duly executed (H4)

LAND LAW - Action - Estoppel - Respondent having established title conveyed by Exhibit A - And relied on Exhibits D, C1 & C2 - Appellants are estopped from relitigating - The facts of the land belonging to the Oba - And that appellants were customary tenant (H5)

APPEALS - Court - Finding - Correctness of - CA decision affirming

trial court's finding stands - As appellants were unable to show that findings of the two courts - Were not based on pleadings and evidence on record (H6)

FACTS

Plaintiff/respondent commenced this suit against defendants/appellants at the High Court of Osun State, claiming damages for trespass and for perpetual injunction restraining appellants from further trespassing on respondent's land. Appellants on the other hand, counter-claimed against respondent for similar reliefs. The case for respondent is that her late husband had acquired the land in dispute from the paramount ruler of Ede - Oba Laoye, the Timi of Ede by a registered deed of conveyance. To strengthen her case, respondent claimed that the Supreme Court had in appeal no. SC/47/1970 affirmed the judgment in a previous suit no. HOS/46/6, which declared Oba Laokye as the owner of the disputed land conveyed to her husband. Respondent further contends that her late husband had exercised rights of possession and ownership on the land.

She further asserted that she continued exercising possession and ownership of the land upon the demise of her husband. In arguing their claim, appellants contend that the disputed land does not belong to the said Oba Laoye the Timi of Ede. Appellants claimed that their great grandfathers acquired the land through inheritance. Hence, appellants have by virtue of the inheritance been exercising acts of ownership over the land. In its judgment, the court found respondent's case proved against appellants. The court therefore declared title in favour of respondent. Appellants were thus held liable in trespass and their counter-claim dismissed. Dissatisfied, appellants appealed to the Court of Appeal Ibadan Division. The court dismissed the appeal and affirmed the judgment of the trial court. Aggrieved further, appellants lodged appeal in Supreme Court.

ISSUES FOR DETERMINATION

"i) Whether the Court of Appeal was right to hold that the land in dispute is the same land as the land in dispute in respect of which judgment was entered in Exhibit C1 and Exhibit C2.

ii) Whether the Court of Appeal was right to uphold the judgment of the Trial Court that the Plaintiff/Respondent had shown a better title by virtue of reliance on Exhibit C1, Exhibit C2 and Exhibit

D.

iii) Whether the Court of Appeal was right to hold that the Plaintiff/Respondent had shown a better title when the Plaintiff/Respondent failed to present any cogent evidence that the land in dispute belonged to the Timi of Ede.

iv) Whether the Court of Appeal was right to uphold the judgment of the lower court that Defendants/Appellants were trespassers on the Plaintiff/Respondent's land, when the Plaintiff/Respondent's case and also the finding of the lower Court was that the Defendants/Appellants were customary tenants of the Timi of Ede - the Plaintiff/Respondent's predecessor in title.

HELD (Unanimously dismissing the appeal per MUHAMMAD JSC)

APPEALS - Perverse finding - Meaning

1. Now, both sides to the appeal are right that decisions being reviewed on appeal are interfered with only where the appellate Court finds them perverse. A finding of fact or decision is said to be perverse when it runs counter to pleadings and evidence on record or where the Court which finding or decision is being reviewed is shown to have taken into account matters which it ought not to have taken into account or shut its eyes to the obvious and by its very nature the finding or decision has occasioned a miscarriage of justice. (p. 3840 C)

Judgment - Interference - Basis

2. In deciding whether or not to interfere with the judgment of the Court below it is incumbent, therefore, to determine whether or not same had evolved from the pleading of parties and evidence led thereon and in the event of holding that a particular finding or indeed the entire judgment had not emanated from the evidence on record, whether that fact has in addition occasioned miscarriage of justice. (p. 3840 E)

Trespass - Damages

3. It must also be restated that a Plaintiff who claims damages

for trespass as well as injunction regarding the land in dispute puts his title in issue. He succeeds on proving that he has a better title to the land than the Defendant. The principle all the more extant in the instant case where the Appellants also Counter-Claim the land in dispute.

B In establishing his title either party may avail himself of any of the five ways of doing so and succeeds on the strength of his case rather than the weakness of the case of his adversary. (p. 3840 H)

C LAND LAW - Title - Proof

4. In the case at hand where the respondent relies inter-alia on a conveyance, one of the five ways the law recognises, to establish her title to the land in dispute, mere production of the deed of conveyance does not automatically establish the title the law requires her to prove. She succeeds if the Court is satisfied that: (a) the conveyance is valid and duly executed, stamped and registered: (b) the grantor has the authority and capacity to make the grant and that the grant has the effect she claims the conveyance has. (p. 3841 C)

Action - Estoppel

5. I cannot agree more. Having established that the land in dispute was conveyed to her late husband by Oba Adetoyese Laoye the then Timi of Ede by virtue of Exhibit 'A', a deed of conveyance; that the land in dispute had evolved on the said Oba Laoye from the first Timi of Ede who had conquered the place and became the original owner of the land; that by her reliance on Exhibits 'D', 'C1' and 'C2' the Appellants are estopped from re-litigating the fact of the land in dispute belonging to the said Oba Laoye and the further fact that the Appellants were customary tenants of the Timi of Ede, a decision other than that of the trial Court as affirmed by the Court below is impossible. (p. 3844 H)

Court - Finding - Correctness of

6. With learned Appellants' Counsel's failure to demonstrate that the findings of the two Courts are neither based on the

pleadings and evidence on record nor that they suffer such shortcoming that have occasioned any miscarriage of justice, the decision of the Court below affirming the trial Court's earlier finding must persist. I so hold. (p. 3845 C)

REPRESENTATION

Olayode Delano with Ahmed Oyegbami, for Appellants
Aderemi A. Abimbola with Kayode Oyedeki, for Respondent

CASES REFERRED TO

Idundun v. Okumagba (1976) NSCC (vol. 10) 445

Dada v. Bankole (2008) 5 NWLR (pt. 1097) 26

Kpomuglo v. Kodadja (1933) 11 WACA 24

Odunze v. Nwosu (2007) 13 NWLR (pt. 1050) 1

Mogaji v. Cadbury Nig. Ltd. (1985) (pt. 7) 394

Orunegimo v. Egebe (2007) 15 NWLR (pt. 1058) 630

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

Salami v. Lawal (2008) 14 NWLR (pt. 1108) 540

Ojo v. Azama (2002) 4 NWLR (pt. 702) 57

Lawani v. Tadeyo (1944) 10 WACA 37

Onyia v. Oniah (1989) NSCC (pt. 1) 319

Abioye v. Yakubu (1991) 5 NWLR (pt. 190) 13

Orlu v. Gogo-Abite (2010) ALL FWLR (pt. 524) 1

Chabassaya v. Anwasi (2010) ALL FWLR (pt. 528) 839

Adimora v. Ajifo (1988) 3 NWLR (pt. 80) 1

LEAD JUDGMENT BY M. D. MUHAMMAD JSC

The Respondent in this appeal being the administratrix of the estate of her late husband, Chief Mr. A Fatoki, instituted suit No. G HOS/33/95 at the Osun State High Court, herein-after referred to as the trial Court, against the Appellants claiming by paragraph 17 of her further, further amended Statement of Claim as follows:-

"i. The sum of N100,000 (One hundred thousand naira) being general damages for trespass committed and being committed by the Defendants, their servants, agents and/or privies when they unlawfully entered the Plaintiff's land situate, lying and being at along Ede-Osogbo road, Ofatedo Area, Osogbo, covered by deed of conveyance dated the 13th day of March, 1975 and registered as No. 2

at page 2 in volume 1706 of the lands registry at the office in Ibadan and more particularly described in survey plan No. WP 15/72 attached to the said conveyance. The land in dispute is verged green on the composite survey plan No. OS/152/96/DS1 dated the 23/5/1996 and drawn by Adebayo A. Adeyemi, a licensed surveyor.

B 2. Perpetual injunction restraining the Defendants, their servants, agents and/or privies from committing further acts of trespass on the Plaintiff's land."

C The Appellants as Defendants by Paragraph 54 of their further Statement of Defence counter-claimed against the Plaintiff /Respondent as follows:-

D "(i) The sum of 57,000.00 (fifty-seven thousand naira only) as damages for trespass committed by the Plaintiff, his (sic) servants, agents or privies on 12th February 1995 on the Defendants land situate, lying and being at Alanomo area, Oshogbo-Ede Road, Ofatedo, more particularly described on survey plan No. LAST/OS/07 dated 12-2-1995 preferred by W. T. Adeniji and filed along with this Statement of Defence and Counter-Claim.

E "(ii) Injunction restraining the Plaintiff whether by herself, her servants, agents, privies or any of them otherwise from committing acts of trespass on the land in dispute."

Pleadings having been filed and exchanged, the matter proceeded to trial.

F The Plaintiff's/Respondent's case is that her late husband in 1975 acquired the land in dispute from the paramount ruler of Ede, the Timi of Ede by a deed of conveyance registered as No 2, at page 2 in volume 1706. Timi Ladosu became possessed of the land through his ancestor Timi Afinju the then Timi of Ede who initially acquired G the land by conquest. Timi Afinju subsequently settled many people as his customary tenants on various parts of the entire land such as Ido-Osun Ofatedo, Awo, Iwaye Ara, Sekona Oloki and others.

H It is Respondent's further case that the then Timi of Ede, Oba Laoye won Suit NO/HOS/46/6 he commenced against Oba Bello Oyewusi, the Oludo of Ido for declaration of title to the parcel of land situate and lying on the first side, by Asungbe or Alawototan Stream, on the second side by Offa town hall along Osogbo road, on the 3rd side by Osun river, on the fourth side by Eyinwona stream The Defendant in Suit NO/HOS/46/6, Respondent also averred, was

restrained by the Court which judgment was affirmed by this Court in appeal No. SC/47/1970. The land in dispute was surveyed during her husband's life time and on his instruction by Mr. Adebayo A. Adeyemi, a licensed surveyor. The land is verged blue on plan No. OS/152/95/D52 dated 17th July, 1995. Mr. Fatoki, the Respondent's husband, exercised rights of possession and ownership on the land and on his demise, the Respondent further asserted, she continued exercising possessory and ownership rights over the same parcel of land warding off trespassers by erecting large sign boards thereon. The land is covered by the letter of administration the Respondent obtained in respect of her husband's estate. It is verged green on the composite plan reproduced by their surveyor. In 1994, Respondent further averred, the Defendants/Appellants wrongfully entered the land, removed the ten sign boards erected on the land by the former. The Appellants continued to stay on the land in spite of repeated warnings.

In their case, the Appellants assert that the land dispute known as Ofatedo and was never owned by the Timi of Ede. The land is situate at Alawunro area and bounded on the front side by Ede-Osogbo road, at the backside by the Nigeria Railway line, on the right side by yidi, and on the left side by Alarano stream. The land is delineated in their survey plan No. LSA/OS/07 drawn by Mr. Adeniyi, verged green in a larger area of land verged red. Each of the Appellants stated that his great grandfather acquired the land in dispute through inheritance from his father or uncle who in turn inherited same from his father. Their great grandfathers on leaving Offa with Oba Adegboye Atoloye, settled in Ita Olaken area Osogbo where they were led in battle by Balogun Osungbekun to ward-off the Fulani warriors. Ita Olakan subsequently became crowded. Following an appeal by Oba Adegboye, Osungbekun allocated to Appellants ancestors the area known as Ofatedo which includes the area dispute. Oba Atoloye granted to each Bale a parcel of land from the area allotted to him by Osungbekun. Since then, their ancestors through whom their fathers and themselves have inherited, enjoyed possessory and ownership rights over the parcel of land until the plaintiff/respondent bull dozed the land and destroyed their crops, which act explains Appellants Counter-Claim.

In its well considered judgment delivered on 8th May, 1998,

the trial Court found that the Plaintiff/Respondent had made out her case while the Appellants/Counter-Claimants did not. The Court declared title in favour of the former and in consequence found the Appellants liable for trespass. Appellants' Counter-Claim, not having been established was equally dismissed.

B Aggrieved by the trial Court's foregoing decision, the Defendants appealed to the Ibadan Division of the Court of Appeal herein-after referred to as the Court below. The Court below in its decision dated 6th May, 2003 affirmed the trial Court's judgment.

C Being dissatisfied, the Appellants have further appealed to this Court on an amended Notice of appeal containing six grounds.

Parties have filed and exchanged their briefs of argument for and against the appeal which briefs were adopted and relied upon at the hearing of the appeal. At page 5 of the Appellants' brief, four D issues have been distilled from the six grounds of appeal in appellants Notice thus:-

"i) Whether the Court of Appeal was right to hold that the land in dispute is the same land as the land in dispute in respect of which judgment was entered in Exhibit C1 and Exhibit C2 (Ground 1)

E *ii) Whether the Court of Appeal was right to uphold the judgment of the Trial Court that the Plaintiff/Respondent had shown a better title by virtue of reliance on Exhibit C1, Exhibit C2 and Exhibit D (Ground 2)*

F *iii) Whether the Court of Appeal was right to hold that the Plaintiff/Respondent had shown a better title when the Plaintiff/Respondent failed to present any cogent evidence that the land in dispute belonged to the Timi of Ede. (Grounds 5 & 6)*

G *iv) Whether the Court of Appeal was right to uphold the judgment of the lower court that Defendants/Appellants were trespassers on the Plaintiff/Respondent's land, when the Plaintiff/Respondent's case and also the finding of the lower Court was that the Defendants/Appellants were customary tenants of the Timi of Ede - the Plaintiff/Respondent's predecessor in title. Grounds 3 & 4)."*

H On Respondent's behalf, the two issues formulated at page 4 of her brief as arising for the determination of the appeal are as followings:-

"(a) Whether there is any substantial error on the face of the

record of proceeding to warrant this Honourable Court to disturb the concurrent findings of fact made by the High Court and the Court of Appeal in this case.

(b) Whether the findings of the trial Court which was affirmed by the lower Court is so perverse to warrant this Honourable Court to disturb the concurrent findings of fact made by the High Court and the Court of Appeal in this case.”

The Appellants argued their 1st and 2nd issues jointly. On the two issues, learned Counsel referred to the lower Court’s finding at page 86 of the record and contended that same is wrong. The suit in Exhibits C1 and C2 was never between the Timi of Ede and Oba of Ofatedo as was held by the Court below. Rather, the suit was between the Timi of Ede and one Oba Oyewusi and the Ido people as the Defendants. The lower Court’s finding on the land in dispute that draw from Exhibits E, C and indeed D being contrary to the trial Court’s finding on same cannot lead to the same inference as the one arrived at by the latter. Whereas the trial Court found that the land in dispute is not within the one litigated upon in Exhibits C1 and C2, the Court below, argued learned Appellants’ Counsel, held differently and perversely too. The lower Court’s perverse finding at page 86, it was submitted, cannot form the basis of a just decision. Once it is shown that the land in dispute is not the same as litigated upon in Exhibits C1 and C2, the decisions in the two judgments cannot, therefore, bind the parties in the instant case and form the basis of the erroneous finding that, for its very reason, the land in dispute belongs to the Respondent. Relying on *Idundun v. Okumagba* (1976) NSCC (vol. 10) 445 at 453 and *Dada v. Bankole* (2008) 5 NWLR (part 1097) 26, it is urged that the two issues be resolved in Appellants’ favour.

Under their 3rd issue, learned Appellants’ Counsel argued that Respondent’s claim being one of damages for trespass and injunction against further trespass, the Plaintiff/Respondent had put his title in issue. Having failed to prove that title by cogent evidence, it was wrong for the lower Court to find for her. The Respondent is in law obliged not only to clearly plead the traditional history she relied upon but to call evidence of same including the origin of her grantor’s title to the land. Most importantly, the law does not allow the Respondent to rely on a 3rd party’s account of the traditional history

she relied on in proof of her root of title. Learned Appellants' Counsel argued that the Respondent not being a member of the family of the Timi of Ede cannot give the history of the Timi she chose to rely on. Inter-alia relying on *Kpomuglo v. Kodadja* (1933) 11 WACA 24. *Odunze v. Nwosu* (2007) 13 NWLR (Pt 1050) 1 at 53; *Mogaji v. Cadbury Nig. Ltd.* (1985) (Pt 7) 394; *Orunegimo v. Egebe* (2007) 15 NWLR (Pt. 1058) 630 at 650 and *Ewo v. Ani* (2004) 3 NWLR (Pt 861) 610 at 637, learned Appellants' Counsel urged that their 3rd issue be resolved in their favour as well.

Under their 4th issue, learned Appellants' Counsel contended that the affirmation of the trial Court's finding to the effect that the Appellants were customary tenants of the Timi of Ede the alleged predecessor in title of the Plaintiff/Respondent is wrong and has no factual basis. The trial Court had at page 53 of the record of appeal held that Appellants who are customary tenants of the Respondent automatically forfeit their right to peaceful possession of the land they hold of their landlords, If they deny their overlord's title. The lower Court, argued learned Counsel, cannot affirm such a finding that resulted from wrong application of a legal principle. The correct position is that forfeiture, even where the fact of Appellants' denial of Respondent's title has been established, learned Counsel submitted, comes to life only where same is ordered by the Court. Learned Appellants' Counsel further contended that in the case at hand where the Respondent has not taken the necessary steps to enforce her right of forfeiture for Appellants' misconduct, not rightly grant that relief to her and the court could not have rightfully, in affirming the lower Court's wrong decision, make an order to that effect. Learned Counsel relied on the decisions *Aghenghen & Ors v. Wagboregnor & Ors* 1974 ALL NLR 84 at 79, *Salami v. Lawal* (2008) 14 NWLR (part 1108) 540, *Ojo v. Azama* (2002) 4 NWLR (part 702) 57 at 71, *Lawani v. Tadeyo* (1944) 10 WACA 37 at 39, *Onyia v. Oniah* (1989) NSCC (part 1) 319 and *Abioye v. Yakubu* (1991) 5 NWLR (part 190) 13 and urged that the issue be resolved against the respondent. On the whole, he urged that the appeal be allowed.

In responding, learned Respondent's Counsel argued their two issues as formulated in the Respondent's brief jointly. He contended that the lower Courts' judgments do not manifest such substantial error on the basis of which this Court, on holding that they are per-

verse, will be entitled to set the two decisions aside. The Respondent, it is argued, had tendered Exhibit C1 and C2 at the trial Court and relied on both to show that there had been litigation between her predecessor in title and the person the Appellants/Counter-Claimants pleaded were the source of their title. The two Exhibits, learned Counsel submitted, were judgments of the trial Court and the Supreme Court concurrently finding that the land in dispute was owned by Respondent's predecessor in title. Whereas the trial Court at page 52 of the record wrongly concluded that the land in dispute not included in the land instantly in dispute, Court below drew the right conclusion that the land in dispute is indeed within the land litigated upon in Exhibits C1 and C2. The Court below, having so found, learned Counsel further argued, is right to maintain that Appellants are estopped from relitigating the issue of ownership of the same piece of land. Learned Counsel relied on the case of *Odumosu v. Oluwole* (2004) FWLR (part 191) 1487 - 1670.

Further arguing the appeal, learned Counsel submitted that the Appellants, who never claimed that they were customary tenants of the Timi of Ede at the trial Court, cannot make a different case subsequently from that which they initially asserted. The trial Court, learned Counsel submitted, did not base its decision on Appellants' subsequent case that they are customary tenants of Respondent's predecessor in title, the Time of Ede. Any argument by the Appellants, it was submitted, enured to the Appellants only with the leave of the Court subsequently approached on the very issue that had not been pronounced upon by the Court which decision was being reviewed.

Lastly, it is trite, argued learned Respondent's Counsel, that there are five ways open to the Respondent who sought declaration of title to land to prove his entitlement. The Respondent herein resorted to one of them, deed of conveyance granted to her deceased husband from whom the Respondent's title evolved. At the time, 1975, the Respondent instituted her claim, with the deed of conveyance having been registered in 1975, the deed was twenty years and the deed by itself constitutes good title. The trial Court had accepted the uncontradicted testimony of the Respondent on the land in dispute, the fact of the grant and its being a virgin land, submitted Counsel, which acceptance being on solid grounds constitutes an unassail-

able finding of that Court. The affirmation of such finding contended learned Counsel remained beyond reproach. Both Courts, submitted learned Counsel, had weighed the evidence of both sides before them and found that of the respondent's heavier. This Court, in the circumstances, cannot interfere. Relying on *Idundun v. Okumagba* B (supra) and SC 227 at 246 - 250, *Orlu v. Gogo-Abite* (2010) ALL FWLR (part 524) 1 at 9 and *Chabassaya v. Anwasi* (2010) ALL FWLR (part 528) 839 at 851, learned Counsel submitted that their two issues be resolved against the Appellants and the unmeritorious appeal dismissed.

Now, both sides to the appeal are right that decisions being reviewed on appeal are interfered with only where the appellate Court finds them perverse. A finding of fact or decision is said to be perverse when it runs counter to pleadings and evidence on record or where the Court which finding or decision is being reviewed is shown to have taken into account matters which it ought not to have taken into account or shut its eyes to the obvious and by its very nature the finding or decision has occasioned a miscarriage of justice. See E *Adimora v. Ajifo* (1988) 3 NWLR (part 80) 1 and *Yaro v. Arewa Construction Ltd. & ors* (2007) 16 NWLR (part 1063) 333 at 374.

In deciding whether or not to interfere with the judgment of the Court below it is incumbent, therefore, to determine whether or not same had evolved from the pleading of parties and evidence led thereon and in the event of holding that a particular finding or indeed the entire judgment had not emanated from the evidence on record, whether that fact has in addition occasioned miscarriage of justice.

It must be remembered that where the finding of the lower Court in issue is shown to be an affirmation of similar finding of the trial Court, this Court remains very hesitant in interfering with the concurrent findings. Even though the Court is slow at interfering with concurrent findings of fact by two lower Courts, it remains trite that H where the findings are shown to be perverse the Court has the duty of interfering in ensuring that the justice of the case prevails. See *Overseas Construction Ltd v. Creek Ent. Ltd.* (1985) 3 NWLR (part 13) 407 and *Akeredolu v. Akinremi* (1989) 3 NWLR (part 108) 164.

It must also be restated that a Plaintiff who claims dam-

ages for trespass as well as injunction regarding the land in dispute puts his title in issue. He succeeds on proving that he has a better title to the land than the Defendant. The principle all the more extant in the instant case where the Appellants also Counter-Claim the land in dispute.

In establishing his title either party may avail himself of any of the five ways of doing so and succeeds on the strength of his case rather than the weakness of the case of his adversary. See Ayoola v. Odofoin (1984) 11 SC 120; Nkado v. Obiona (1997) 5 NWLR (part 503) 31 at 34 and Ewo v. Ani (2004) 17 NSCQR 36.

In the case at hand where the respondent relies inter alia on a conveyance, one of the five ways the law recognises, to establish her title to the land in dispute, mere production of the deed of conveyance does not automatically establish the title the law requires her to prove. She succeeds if the Court is satisfied that: (a) the conveyance is valid and duly executed, stamped and registered: (b) the grantor has the authority and capacity to make the grant and that the grant has the effect she claims the conveyance has. See Kyari v. Alkali (2001) FWLR (part 60) 1481, Romaine v. Romaine (1992) 4 NWLR (part 238) 650 and Dabo v. Abdullahi (2005) 7 NWLR (part 923) 181.

It is equally on record that the Respondent further relies on Exhibits C1 and C2, judgments of the High Court of Justice in suit HOS/42/64 between Oba J. A. Laoye the Timi of Ede, the vendor of the land in dispute to her late husband and Bello Oyewusi Oba Iddo, through whom the Appellants claim. Exhibit C1 is the certified true copy of the judgment of the High Court Oshogbo. Exhibit C2, on the other hand, is the Supreme Court's affirmation of the judgment of the High Court, Oshogbo in favour of the Timi of Ede. Respondent further relies on Exhibit D the certified true copy of the evidence of Oba Buraimoh Olawuyi, a former Olofa of Ofatedo, in suit No. HOS/42/64. In the said Exhibit D, Oba Buraimoh had testified in suit HOS/42/64 that the people of Ofatedo were customary tenants of the Timi of Ede and had paid Isakole tribute to him.

The Appellants in proving their entitlement to the land in dispute denied being customary tenants of the Timi of Ede. It is their case that their ancestors had come from Kwara as a result of the

Fulani war and were assisted by Balogun Osungbekun, whom they invited from Ibadan, to conquer the Fulanis. On repelling the Fulani's back to Ilorin, Balogun Osungbekun granted land to Oba Atoloye at Ofatedo. The Appellants further asserted that it was Oba Atoloye who granted the land in dispute to their ancestors.

B The task before the trial Court is to find if any of the two, the Respondent or the Appellants, had succeeded in establishing by cogent evidence, their claim as pleaded.

C The trial Court in finding for the Respondent and dismissing Appellants' Counter-Claim reasoned firstly at page 52 of the record of appeal as follows:-

"Since the Plaintiff in this case is claiming through the real owner i.e. the Timi of Ede who is the customary landlord of the Defendants even though the Defendants denied being customary tenants of Timi D of Ede, it is my view that the Plaintiff is having a good title. Furthermore in denial of being customary tenants, the Defendants relied on the grant made by Balogun Osungbekun as their root of title. There is no evidence to show how Balogun Osungbekun came to own the land granted to Oba Atoloye and no member of Balogun E Osungbekun family was called to testify that Balogun Osungbekun granted the land in dispute to the Defendants.

In the circumstance, it is my view that the Defendants have failed to prove their root of title. See Mogaji v. Cadbury (1985) 1 F NWLR part 7 at page 393. Therefore, the Plaintiff is having better title to the land in view of the fact that they claimed through the real owner of the land who is the Timi of Ede."

The Court concluded at page 53 - 54 thus:-

"In view of my findings above and the evidence in this case, I G hold the view that the Defendants trespassed on the Plaintiff's land, therefore the Plaintiff is entitled to damages for trespass. The Plaintiff is claiming N100,000.00 damages, but she failed to prove special damages arising from the trespass. In the circumstance, nominal damages would be awarded as general damages. I therefore allow H N10,000.00 as general damages in favour of the Plaintiff against the Defendants."

In affirming the foregoing decision of the trial Court, the Court below held at page 87 of the record of appeal as follows:-

"There is no reason shown in the appeal to differ from the

conclusion reached by the Court below. The appeal of the Appellant on the Counter-Claim is dismissed. The judgment of the Court below is affirmed."

The main issue raised by the Appellants in this appeal is that the concurrent findings of fact by the two Courts are perverse. By the trial Court's finding at page 52 of the record of appeal, that the land claimed by the Respondent does not form part of the land litigated upon in suit No. HOS/42/64 evidenced by the judgment of the Oshogbo High Court, Exhibit C1, as affirmed by this Court in Exhibit C2, learned Appellants' Counsel argued, the Respondent was wrongly held to have established her claim. The passage alluded to by learned Appellants' Counsel in the trial Court's judgment is hereunder reproduced for ease of reference:-

"I find as a fact that it was inside the area verged Red in exhibits 'E' & 'P' that the Plaintiff's vendor sold to the Plaintiff and the area verged Red is not (sic) included in the area litigated upon in exhibit 'C1' and 'C2'."

Learned Appellants' Counsel seems to wallow under serious misapprehension of the true findings of the trial Court and the lower Court's affirmation of same. It is glaring that Exhibit 'E' in respect of which the trial Court found Respondent's vendor to have sold part of the area verged red thereof to Respondent's late husband was the survey plan on which suit No. HOS/42/64 was fought leading to the decision of the trial High Court in Exhibit 'C1' as affirmed by this Court in Exhibit 'C2'.

I am in complete agreement with learned Respondent's Counsel's submission that there is a manifest slip in the passage of the trial Court's judgment the Appellants contended has held to the contrary of what the facts on the record clearly warrant as the only logical inference. Had learned Appellants' Counsel availed himself of the trial Court's earlier finding at page 51 of the record of appeal it would have facilitated a better grasp of the true ratio in the Court's decision and lower Court's affirmation of same. Thereat, the trial Court had held:-

"In Exhibit "D" Oba Buraimoh Olawuyi testified to the effect that the Ofatedo people were customary tenants of Timi of Ede and had been paying Isakole tribute to Timi of Ede. The trial Court in suit No. HOS/42/64 as could be seen from Exhibit 'C1' made specific

finding that the Ofatedo people were customary tenants of Ede people on the land then in dispute. This finding of fact was confirmed by the Supreme Court as could be seen in Exhibit ‘C2’ i.e. the certified true copy of the judgment of the Supreme Court.”

In affirming the trial Court’s findings, the Court below reasoned firstly at pages 86-87 of the record of appeal as follows:-

“It is a satisfactory conclusion when Court below found that the land is the same. The Appellants asked in their brief whether the Appellants are bound by the decision in exhibits C.1 and C.2. The answer clearly is that the judgment of the Supreme Court on the land is judgment in rem; until a better title holder shows up. In exhibit C.2, the Supreme Court affirmed the decision of the Court below, that the (sic) a larger area of land in Ede, that road is the property of the Timi of Ede, that judgment subsists over a smaller area of land in the same area verged red on Exhibit C, in favour of the successful litigant in the case, against anybody claiming from or in trust from the party who did not succeed in the case. Consequently as the land claimed by the Defendant is the same over which judgment has been delivered in exhibit E, the survey plan of the judgment, the judgment in exhibits C.1 and C.2 bind the Defendants, no Appellants.

The Court further reasoned thus:-

It is the evidence of the Plaintiff in the Court below now Respondent that the land in dispute was granted to the late M. F. Fatoki by the person in whose favour judgment in exhibit C.1 and C.2 had been awarded, part of the land over which the judgment was given in exhibit E is what the Appellant’s counter-claimed. It falls to reason to conclude that the Appellants have not proved their root of title through one Osungbekun who they said gave the land to Oba Atoloye. It is in evidence that Buraimoh Olaniyi was once an Oba of Ofatedo under whose suzerainty the Defendants have been proved to be, and who has admitted the ownership of the land in exhibit E, to the grantor of the Plaintiff, the Timi of Ede. The above is sufficient proof of the Plaintiff’s claim in the Court below, and an answer to the Appellants question is in the positive that is to say, the Respondent has established his (sic) title to the claim in the Court below from the above...”

I cannot agree more. Having established that the land in

dispute was conveyed to her late husband by Oba Adetoyese Laoye the then Timi of Ede by virtue of Exhibit 'A', a deed of conveyance; that the land in dispute had evolved on the said Oba Laoye from the first Timi of Ede who had conquered the place and became the original owner of the land; that by her reliance on Exhibits 'D', 'C1' and 'C2' the Appellants are es-^B
topped from re-litigating the fact of the land in dispute be-
longing to the said Oba Laoye and the further fact that the Appellants were customary tenants of the Timi of Ede, a deci-^C
sion other than that of the trial Court as affirmed by the Court below is impossible. With learned Appellants' Counsel's fail-
ure to demonstrate that the findings of the two Courts are
neither based on the pleadings and evidence on record nor
that they suffer such shortcoming that have occasioned any
miscarriage of justice, the decision of the Court below affirm-^D
ing the trial Court's earlier finding must persist. I so hold.

It is for all that I have tried to say that I resolve the crucial issues raised by the Appellants against them, find no merit in their appeal and dismiss same. I award costs of this appeal, the appeal at the Court below and of the suit at the trial Court assessed cumulatively at N300, 000.00 against the Appellants in favour of the Respondent.^E

I. T. MUHAMMAD JSC

My learned brother M. D. Muhammad, JSC made available to me, in a draft form, the judgment just delivered.^F

I am in agreement with his reasoning and conclusion. The appeal lacks merit and I, too, dismiss it. I abide by all orders made in the leading judgment including order as to costs.^G

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - M. D. Muhammad, JSC. I agree with the reasons therein set out to arrive at the conclusion that the appeal is devoid of merit and deserves an order of dismissal.^H

The Respondent, as Plaintiff at the trial Court, claimed the sum of N100, 000:00 as damages for trespass and perpetual injunction

restraining the Appellants from further committing acts of trespass on the Respondent's land covered by a deed of conveyance, situate at Ofatedo area of Osun State. The Appellants also counter-claimed for the sum of N57, 000.00 for trespass and injunction to restrain the Plaintiff in respect of the land in dispute.

B The trial Court heard the parties and gave judgment in favour of the Plaintiff/Respondent while the Counter-Claim of the Defendants/Appellants was dismissed. The Defendants appealed to the Court of Appeal which dismissed same.

C The Defendants have decided to further appeal to this Court. It is extant in the records that the Respondent's husband derived titled to the land from Oba Laoye-Timi of Ede who derived title from his father - Oba Afinju - Timi of Ede who got same by conquest. Oba Laoye drew up conveyance with Mr. Fatoki in respect of the land, D which was registered at the Lands Registry in Oshogbo in 1975. Same adequately satisfied proof of ownership of the land in dispute. See *Idundun v. Okumagba* (1976) 9-10 SC 246; *Piaro v. Tenalo & Anor* (1976) FNR 229 at 234; *Orlu v. Gogo-Abite* (2010) All FWLR (Pt. 524) 1 at page 9.

E The Respondent exercised acts of ownership over the land in dispute. The Respondent erected sign boards on the land and sold portions of the land to others. The Appellants who tried to force themselves onto the land were inhibited by the Respondent who used caterpillar to demolish their structures. Such were clearly acts of F possession and ownership; as found by the lower Courts.

The two lower Courts also found that act of trespass was established against the Appellants.

G The concurring findings of fact by the two lower Courts have not been found to be perverse.

H It has always been stressed that this Court will not ordinarily interfere or disturb concurrent findings of fact by the two lower Courts unless same is found to be perverse or substantial error is apparent on the face of the record of proceedings. There is no valid reason to interfere in this matter with respect to the concurrent findings of the lower Courts. I shall not interfere. See: *Seatrade v. Awolaja* (2000) 2 SC (pt. 1) 35; *Fajemirokun v. C. B. Nig. Ltd.* (2009) 5 NWLR (Pt. 1135) 588 at 599.

For the above reasons and of course the detailed reasons ad-

umbrated in the lead judgment, I too feel that the appeal lacks merit and should be dismissed. I order accordingly and affirm the judgment of the Court of Appeal.

GALADIMA JSC

B

I have had the honour to read before now, the Judgment of my Lord, M.D. MUHAMMAD JSC just delivered with which I entirely agree. For the same reasons which I hereby adopt as mine, I too, dismiss the appeal. I abide by the order of costs contained in the leading Judgment.

C

ALAGOA JSC

This is an appeal against the judgment of the Court of Appeal, Ibadan Division delivered on the 6th May, 2003 which affirmed the judgment of the High Court of Osogbo, Osun State delivered on the 6th May, 1998. In the said High Court the Respondent as Plaintiff took out a Writ of Summons against the Appellants as Defendants claiming as follows:-

E

1. The sum of N100, 000.00 being damages for trespass on the Plaintiff's land.

2. Perpetual injunction restraining the Defendants, their servants, agents and/or privies from further trespass on the land.

F

The Appellants as Defendants counter-claimed as follows:

1. The sum of N57, 000.00 being trespass by the Plaintiff, his servants, agents or privies on the 12th February, 1995.

2. Injunction restraining the Plaintiff, her servants, agents or privies from further trespass on the land in dispute.

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Pleadings having been filed and exchanged the matter went on to be heard and the trial Court gave judgment in favour of the Plaintiff now Respondent while dismissing the counter-claim of the Defendants now Appellants.

Dissatisfied the Defendants applied to the Court of Appeal which dismissed the appeal and affirmed the judgment of the High Court on both the claim and the counter-claim.

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This is a further appeal to this Court. It is also important to say that at the Court below (the Court of Appeal) the Appellant applied

to raise a new issue on jurisdiction which was not canvassed in the High Court to the effect that the land in dispute is in a rural area over which the High Court had no jurisdiction as a Court of first instance. This was also considered by the Court below before dismissing the appeal. Two issues formulated by the Respondent in the Court below were:

1. Whether the trial Court had jurisdiction to entertain the action, the land in dispute being in a rural area.

2. Whether the Respondent had sufficiently proved her case to entitle her to the claims being sought by her.

With respect to (1) it is in evidence that a Conveyance was drawn up with respect to the land between the Timi of Ede, Oba Laoye and Mr. Fatoki which land was registered in the Land Registry, Osogbo and by the provision of Section 39(1) of the Land Use Act only the High Court has original jurisdiction in respect of such land registered under the Statutory Right of Occupancy. In any case, any proceedings relating to any land conveyed under the Certificate of Occupancy is subject to the sole jurisdiction of the High Court. The Court below rightly resolved that issue in favour of the Respondent saying that the trial High Court had jurisdiction over the land. With respect to (2) evidence was led in the trial Court by the Plaintiff/Respondent, Mrs. Fatoki of how her husband got the land from Oba Laoye Timi of Ede who in turn got it from his father the Timi of Ede Oba Afinji who got it by conquest. The Timi drew up a conveyance with late Mr. Fatoki and the land was registered in the land Registry at Osogbo. The Timi settled several people on the land as customary tenants. During his lifetime Mr. Fatoki exercised rights of possession and ownership over the land and after his death she continued to exercise rights of ownership and possession over the land. Sometime in 1994, the Appellants numbering five entered the land and removed the ten signboards erected by the Respondent on the land and refused to withdraw from the land in dispute despite repeated warnings. The Timi had in exhibit C2 got judgment over a large parcel of land a smaller part of which is Exhibit C. The Respondent aside from erecting ten signboards on the land also sold parts of the land to people and took caterpillar to the land. By the Appellants submission, they entered the land and periodically planted seasonal crops on the land in the possession and use of the Plaintiff.

There are five ways of establishing title to disputed land namely:-

1. Traditional evidence

2. Conquest

3. Grant

4. Sale and purchase

5. Prior possession and acts of ownership. See *IDUNDUN & B ORS v. OKUMAGBA* (1976) 9/10 SC. 246 - 250 which is the locus classicus on this subject matter. Other cases are as follows - *ATANDA & ORS v. AJANI* (1989) NWLR (PART III) 511, *MOGAJI v. CADBURY NIG. LTD.* (1985) 2 NWLR 393 at 431. The list is indeed C inexhaustible.

Evidence led which was never rebutted is that the Appellant's husband from whom the Appellant derived title, derived his own title to the land from Oba Laoye, Timi of Ede who in turn derived his own title from his father Oba Afinji, Timi of Ede who got it by conquest. The Appellant has also been exercising acts of possession and ownership over the land in dispute. It would therefore appear that the Appellant has succeeded in establishing not just traditional history to the land but also title by conquest and possession and acts of ownership. In *WAHAB ALAMU SAPO & ANOR. v. ALHAJI BINTU SUNMONU* (2010) 11 NWLR (PART 1205) 374, this Court held as follows, E

"As now settled proof of ownership is prima facie proof of possession, the presumption being that the person having title to the land in dispute is in possession." F

The Respondent not only erected sign boards on the land, but also sold portions of the land to others and took caterpillar to the land. These are all acts of possession and ownership of the land.

The Court below to my mind is right in holding that the trial Court was right in holding that trespass to the land by the Appellants had been proved. The counter-claim was found to relate to the same piece of land and the trial Court was right to dismiss same. G

This is a concurrent finding of the High Court and the Court below. By a long line of judicial authorities, the attitude of the Supreme Court to concurrent findings of two lower Courts is not to upset such findings except they are perverse or there is some fundamental error or a violation of some fundamental principles of law or procedure which have occasioned a miscarriage of justice. See *AMADI* H

v. NWOSU (1992) 6 SCNJ 59; IGWEGO v. EZEUGO (1992) 6 NWLR (PART 249) 561; EHOLOR v. OSAYANDE (1992) 7 SCNJ 217; AKEREDOLU v. AKINREMI (1989) 3 NWLR (PART 108) 164; OGUNBIYI v. ADEWUNMI (1988) 5 NWLR (PART 93) 215.

I do not find the concurrent findings of the lower Court and
B the High Court bedeviled by any of these shortcoming.

It is for these reasons and the fuller reasons given in the lead
judgment by my learned brother that I too find no merit in the ap-
peal and dismiss same. The judgment of the lower Court delivered
C on the 6th May, 2003 is hereby affirmed. I abide by the order on
costs contained in the said lead judgment.

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