

SUPREME COURT OF NIGERIA
FRIDAY 13TH DECEMBER, 2013. SC. 82/2004
CORAM:- M. MOHAMMED, C. M. CHUKWUMA-ENEH,
O. ARIWOOLA, C. B. OGUNBIYI, K. B. AKA'AH, JJSC

CHIEF D. B. AJIBULU APPELLANT
AND
MAJOR GENERAL D. O. AJAYI (RTD.) RESPONDENT

APPEALS - Issues - Formulation - Basis - Issues are distilled from grounds of appeal - And any issue which does not arise from a ground - Is incompetent and must be struck out (H1)

APPEALS - Grounds - Issue - Formulation - Grounds 2 and 3 from which no issue was formulated - Are deemed abandoned and are to be struck out (H2)

LAND LAW - Title - When in issue - Where claim for trespass is coupled with claim for injunction - Title of parties to the land in dispute - Is automatically put in issue (H3)

PLEADINGS - Content - Pleadings contains statements of facts - Which are explicit in stating the case contested by parties - And such facts give rise to issues which are to be proved by evidence (H4)

EVIDENCE - Admitted facts - Weight - Absence of issues signifies admission - And admitted facts are never in issue - And therefore need no proof (H5)

PLEADINGS - Traverse - Denial must be unequivocal - And should not leave anyone in doubt as to the intention sought to portray (H6)

LAND LAW - Title - Proof - Plaintiff must rely on the strength of his case - And not on weakness of defence - Except where evidence of defence supports the case of plaintiff (H7)

LAND LAW - Root of title - Proof - Plaintiff who seeks title to land has the onus to show how he or his predecessor in title - Has acquired

4154 Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153; (2014) 2
such (H8)

LAND LAW - Title - Proof - Means of - Idundun v. Okumagba - Title can be proved by traditional evidence - Documents of title - Acts of ownership - Acts of possession - And proof of possession of adjacent or connected land (H9)

EVIDENCE - Actions - Civil matters - Standard of proof - Civil cases are decided on preponderance of evidence - As Judge is expected to weigh evidence of both sides on imaginary scale - To determine where the pendulum will tilt (H10)

EVIDENCE - Evaluation - Trial court assesses demeanour of witnesses - And appellate court does not interfere with findings reached thereat - Unless where such findings are perverse - Or based on evidence not legally admissible (H11)

LAND LAW - Grant - Root of title - Proof of - Where party relies and pleads a grant as his root of title - He must prove such grant to the satisfaction of court (H12)

FACTS

Before the High Court of Osun State Osogbo, plaintiff/respondent commenced this suit against defendant/appellant, claiming for damages in trespass and perpetual injunction over a piece of land in dispute. Respondent contends that he is the bona fide owner of the land by virtue of a deed of conveyance (Exhibit A) registered at the States' Land Registry (then at Ibadan). Respondent stated that the said deed was executed in his favour in 1973 by one late Chief Timothy Dada. Appellant on the contrary disputed the title of the late Chief Dada and rather stated that the land belonged to Sapo family.

Appellant went further to argue that it was from the Sapo family his (appellant's) son subsequently bought large expanse of land including the one now in dispute. Appellant stated that his son gave him the land in dispute. In his judgment, the learned trial Judge found in favour of respondent and held that he (respondent) only needed to tender Exhibit A in order to establish his title over the land in dispute. In otherwords, that it was unnecessary to prove the title of

Chief Dada as there was no issue joined by the parties on his title. Dissatisfied, appellant appealed to the Court of Appeal. The court affirmed the findings and judgment of the trial court. Aggrieved further, appellant lodged an appeal in Supreme Court.

ISSUE FOR DETERMINATION

“Whether having regard to the facts and circumstances of this case the learned Justices of the Court of Appeal were right when they held that the respondent discharged the burden of proof as required by law to entitle him to judgment in this case”.

HELD (Unanimously dismissing the appeal per **OGUNBIYI JSC**)

APPEALS - Issues - Formulation - Basis

1. Without belabouring the point, the law is well settled and as rightly submitted by the learned respondent’s counsel, that issues for determination are distilled from the grounds of appeal. Any issue which does not arise or has its origin from a ground of appeal is incompetent and must be struck out.

(p. 4161 D)

APPEALS - Grounds - Issue - Formulation

2. It is also correct to say that appeals are argued on issues derived and predicated on grounds of appeal which are reduced into issues. Any ground of appeal therefore that does not translate into an issue is deemed abandoned and ought to be struck out.

In the absence of any issue formulated from grounds 2 and 3 of the grounds of appeal, same are deemed abandoned and are hereby struck out. (p. 4161 D)

LAND LAW - Title - When in issue

3. From the Writ of Summons and the Statement of Claim, the subject matter of the suit at the trial court was in trespass and injunction. Plethora of authorities are well settled that where a claim for trespass is coupled with a claim for an injunction, the title of the parties to the land in dispute is automatically put in issue.

The implication therefore holds true that the heavy weather made by the appellant in insisting that the respondent ought to have pleaded his title goes to no issue. (p. 4164 D)

PLEADINGS - Content

- 4. By the very nature of pleadings, it contains statements of fact which are explicit in stating the case contested by the parties. Pleadings therefore serve a foundational nucleus of a case. Contested facts on pleadings give rise to issues which are to be proved by evidence.*** (p. 4164 G)

EVIDENCE - Admitted facts - Weight

- 5. The absence of issues signifies admission and thus calls for no evidence. Admitted facts are never in issue and therefore need no proof.*** (p. 4164 H)

PLEADINGS - Traverse

- 6. With particular reference made to paragraph 3 of the appellant/defendant's averment supra, same amounts to a general denial which in law is not sustainable as it is neither here nor there. For traverse to amount to a denial, it must be explicit, unequivocal and should not leave anyone in doubt as to the intention sought to portray.*** (p. 4166 B)

LAND LAW - Title - Proof

- 7. A long line of authorities have settled that in a case where both parties claim title to land, the court is more concerned with the relative strength of the party with better right who must be given the declaration. It is also elementary to restate that for the plaintiff to succeed, he must rely on the strength of his own case and not on the weakness of the defence, except, however, where such evidence of the defence manifestly supports the case of the plaintiff.*** (p. 4167 D)

LAND LAW - Root of title - Proof

- 8. The legal position is also well established wherein a plaintiff in seeking title to land has the onus to show how he or his predecessor in title has acquired such.*** (p. 4167 E)

LAND LAW - Title - Proof - Means of - Idundun v. Okumagba

9. It is well settled in our legal system that proof of title must be established through one of the five ways as laid down in the case of Idundun Vs. Okumagba (1976) 9-10 SC. 223 which are as follows:-

- (1) By traditional history or evidence or;
- (2) By documents of title;
- (3) By various acts of ownership, numerous and positive and extending over a length of time as to warrant the inference of ownership or;
- (4) By acts of long enjoyment and possession of the land and;
- (5) By proof of possession of adjacent land in circumstances which renders it probable that the owner of such adjacent land would in addition be the owner of the land in dispute.

The burden placed on the plaintiff is to prove at least one of the five ways and not conjunctively. (p. 4167 F)

Actions - Civil matters - Standard of proof

10. The law is well established, that under our adversarial system of jurisprudence, civil cases are decided on preponderance of evidence.

In summary, before the trial court accepts or rejects the evidence of either side, it is expected of the judge to construct an imaginary scale of justice whereupon he is expected to weigh the evidence of both sides for purpose of determining to which side the pendulum will tilt; the determination which is not dependent upon number of witnesses called. It is rather the credibility that gives probative value to witnesses.

In the evaluation of evidence therefore, the central focus expected of a trial court is whether it made proper findings upon the facts placed before it. In other words, as long as a trial court judge does not arrive at his judgment simply by considering the case of one party and not the other but properly evaluate both sides, the decision will not be set aside merely because he adopts a method which is novel to the usual

system. The measuring yardstick is the consideration of the totality of the entire case thus arriving at the just determination of the issues in controversy. The test is that of the perception by an ordinary reasonable man. (p. 4169 F)

B EVIDENCE - Evaluation

11. The trial court has the benefit of hearing and assessing the demeanour of witnesses. It is not within the powers of the appellate court to encroach upon that privilege by way of interfering with the trial judge's findings unless they are shown to be perverse, unsupported by evidence or based on evidence not legally admissible. (p. 4170 B)

LAND LAW - Grant - Root of title - Proof of

D 12. The position of the law is well settled, that where a party relies and pleads a grant as his root of title, he is under a duty to prove such a grant to the satisfaction of the trial court. (p. 4171 E)

E REPRESENTATION

S. C. Imo appearing with E. O. Obuji for the Appellant
Femi Ayandokun Esq., for the Respondent

CASES REFERRED TO

- F** Iyoho v. Effiong (2007) 11 NWLR (pt. 1044) 3
- Nwadiogbu v. Nnadozie (2001) 12 NWLR (pt. 727) 315
- Alfotrin Ltd. v. A-G Federation (1996) 9 NWLR (pt. 475) 634
- Ayorinde v. Sogunro (2012) 11 NWLR (pt. 1312) 460
- G** Olobunde v. Adeyoju (2000) 10 NWLR (pt. 10) 562
- Akintola v. Lasupo (1991) 3 NWLR (pt. 180) 508
- Okorie v. Udom (1960) SC NLR 326
- Mogaji v. Cadbury Ltd. (1985) 2 NWLR (pt. 7) 373
- Ali v. Alesinloye (2000) 6 NWLR (pt. 40) 117
- H** Olohunde v. Adeyoju (2000) 10 NWLR (pt. 676) 562
- Adesanya v. Aderounmu (2000) 9 NWLR (pt. 672) 370
- Ige v. Fagbohun (2001) 10 NWLR (pt. 721) 468
- Olufosoye v. Olorunfemi (1989) 1 NWLR (pt. 95) 26
- Woluchem v. Gudi (1981) 5 SC 291

Idundun v. Okumagba (1976) 9-10 SC 223

STATUTE REFERRED TO

Evidence Act, s. 2

LEAD JUDGMENT BY OGUNBIYI JSC

The appeal is against the judgment of the Court of Appeal Ibadan Division delivered on the 16th July, 2003 wherein the court below found in favour of the respondent who was the successful candidate at the court of 1st instance. The appellant was the defendant at the trial court with the respondent as the plaintiff. C

The facts of the case culminating into this appeal are as follows: The respondent, as plaintiff before the High Court of Justice, Osogbo in Suit No. HOS/12/97 claimed against the appellant as defendant for damages in trespass and perpetual injunction. D

The plaintiff/respondent's case on the one hand is that he became vested with the title to the land in dispute vide a deed of conveyance registered as No/43/43/1502 at the lands registry in Ibadan. The aforesaid deed of conveyance which was executed in his favour by one Chief Timothy Dada (late) in 1973 was admitted in evidence at the trial court as Exhibit "A". The plaintiff's story proceeded that sometimes in 1996 he discovered that the appellant was trespassing on the land in dispute by putting a building thereon. E

The appellant was approached by the agents of the respondent in order to let him know that the respondent was the bona fide owner of the disputed land but the appellant refused and hence the action which brought about the present appeal. F

On the other hand, the appellant has vehemently disputed the title of Chief Timothy Dada to the land in dispute by stating that he had once told him in 1975 that he was not the owner of the land and rather that the land belonged to Sapo family. The appellant's case therefore was that, although the said Chief Dada had plots of land adjacent to the land in dispute, the negotiation for the purchase of the disputed land by the said Chief Timothy Dada was never concluded with the Sapo family. G H

In further substantiation, it was restated that it was from the Sapo family that his (appellant's) son, Mr. Olanrewaju Ajibulu subsequently bought a large expanse of land, including the land in dispute

and the sale was evidenced by an agreement which was admitted in evidence as Exhibit “F”. The appellant also admitted buying a different parcel of land from Chief Timothy Dada upon which he had erected his first building which was later acquired by the Osun State Government for the purpose of constructing the express road; that it
B was after the demolition of the said building that his son, Mr. Olanrewaju Ajibulu offered him the land in dispute, which was a part of the land contained in Exhibit “P”, for his building.

The appellant maintained that the land which he bought from
C Chief Timothy Dada which was covered by Exhibit “B” did not extend to the land in dispute. The learned trial judge in the circumstance and while finding in favour of the respondent as plaintiff held that all the plaintiff/respondent needed to establish in order to succeed in his claim was to tender exhibit “A” and no more. In otherwords,
D that it was unnecessary to prove the title of Chief Timothy Dada as there was no issue joined by the parties on his title. The defendant therein lodged an appeal to the Court of Appeal, which also towed and affirmed the trial court’s judgment in holding the view that no issue was joined by the parties in respect of Chief Timothy Dada’s
E title to the land in dispute. The appellant was again dissatisfied with the decision arrived at by the Lower Court and proceeded to file a notice of Appeal to this court on the 20th August, 2003 containing three grounds of appeal.

I wish to state in passing that the seeming Amended notice of
F appeal contained in the file which was dated 8th day of May, 2013 and filed 13th May, 2013 has nothing to do with this appeal. This is because the appellant neither himself made reference to such an amendment nor is there any evidence on record to show that any
G order of court was sought and obtained for that purpose. The confirmation of this is especially so where the appellant at paragraph 2.14 of his amended brief of argument specifically related to a notice of appeal filed on the 20th August, 2003 which is contained at pages 104 - 105 of the record of appeal upon which this appeal will be
H determined.

In compliance with the Rules of Court, parties filed and exchanged their respective briefs of arguments. At the time of the hearing of this appeal, while the appellant’s learned counsel relied on the amended brief of argument filed 13th May, 2013, reliance was predi-

cated on the brief filed on 24th June, 2013 on behalf of the respondent. Only one lone issue was formulated by the appellant from ground one of the three grounds of appeal filed. The said issue was tersely adopted by the learned respondent's counsel. I will also adopt same as it will be sufficient to determine this appeal. The issue is hereby reproduced as follows:- B

“Whether having regard to the facts and circumstances of this case the learned Justices of the Court of Appeal were right when they held that the respondent discharged the burden of proof as required by law to entitle him to judgment in this case”. C

As a pre-requisite and briefly, I wish to consider the submission by the respondent's counsel wherein objection was raised on the competence and status of grounds 2 and 3 of the grounds of appeal from which no issues were formulated by the appellant.

Without belabouring the point, the law is well settled and as rightly submitted by the learned respondent's counsel, that issues for determination are distilled from the grounds of appeal. Any issue which does not arise or has its origin from a ground of appeal is incompetent and must be struck out. It is also correct to say that appeals are argued on issues derived and predicated on grounds of appeal which are reduced into issues. Any ground of appeal therefore that does not translate into an issue is deemed abandoned and ought to be struck out. D E

In the absence of any issue formulated from grounds 2 and 3 of the grounds of appeal, same are deemed abandoned and are hereby struck out. F The authority in the case of Iyoho V. Effiong (2007) 11 NWLR (Pt. 1044) 3 at 49 is in point and relevant. The preliminary objection raised by the learned respondent's counsel Mr. T. S. Adegboyega is therefore sustained and I hereby strike out grounds 2 and 3 of the grounds of appeal for having been abandoned. G

Submitting for purpose of sustaining the issue raised, the appellant's counsel Mr. S. C. Imo related copiously to the pleadings of the parties for purpose of re-affirming that issues were joined between them on the title of the respondent's vendor over the land in dispute. In other words, counsel sought to pursue the question which seeks to determine the ownership of the land in dispute between H

Chief Timothy Dada and Alhaji Ajani Sapo; that this is evident because while the respondent traced his root of title to Chief Timothy Dada, the appellant traced his root to Alhaji Bello Ajani Sapo; Counsel further re-iterated that the respondent was not left in any doubt that the title of his vendor was being hotly contested by the appellant
 B at the close of pleadings. Furthermore, and in seeking to define the phrase “facts in issue”, the learned counsel drew our attention to section 2 of the Evidence Act for the proper understanding of the concept. Reference in further clarification was also resorted to decided authorities with specific reference made to the case of *Nwadiogbu Vs. Nnadozie* (2001) 12 NWLR (Pt. 727) 315 at 329.
 C

In the determination as to whether the respondent discharged the burden of proof required by law to entitle him to judgment, the appellant’s counsel resorted to critical examination of exhibits A, B, D and C and concluded that the respondent did not call any evidence to establish the title of Chief Timothy Dada to the land in dispute. Counsel further re-iterated that having regard to paragraph 5 of the amended statement of claim which the appellant was said to have also denied by paragraph 5 of his amended statement of Defence,
 E the learned appellant’s counsel sought to relate same to exhibits “C” and “F” being the composite plan and the large parcel of land sold to Mr. Olanrewaju Ajibulu by the Sapo family respectively.

On the totality of the foregoing conclusion coupled with the evidence adduced by D.W. 2, the counsel demonstrated the
 F respondent’s inability to call in aid the provisions of section 46 of the Evidence Act. This he submitted as obvious because the land in dispute is adjacent to the lands originally owned by Sapo family on one hand and that also originally owned by Chief Timothy Dada on the
 G other. In otherwords, that while Chief Timothy Dada originally owned the lands to the right of the disputed land, the Sapo family owned those to the left.

In the quest to resolve the question, whose land is in dispute, the learned counsel berated the respondent’s inability as the plaintiff
 H to proffer any explanation or answer; that the appellant’s evidence as D.W. 1 and that of his witness, Alhaji Bello Ajani as D.W. 2 which were unchallenged ought therefore be deemed admitted. Counsel cited the case of *Alfotrin Ltd. Vs. A.G. Federation* (1996) 9 NWLR (pt. 475) 634 at 661 and urged that the court should have accepted

D.W. 2's evidence and acted thereon; that the Justices of the lower court erred and also misdirected themselves when they identified the onus of proof in a claim of this nature as held out thus at page 92 of the record "*where a claim for trespass is coupled with a claim for an injunction, the title of the parties to the land in dispute is automatically put in issue*"; that the law is well settled on the plaintiff's position who must succeed on the strength of his own case and not rely on the weakness of the defence. B

The case of Nwadiogbu vs. Nnadozie (2001) 12 NWLR (Pt. 727) 315 at 330 was cited in reference. The learned counsel further repositioned that the failure on the part of the respondent to plead and lead evidence to establish Chief Timothy Dada's title to the land in dispute is fatal to his claim and which this court is urged to so hold by allowing this appeal and dismiss the plaintiff/respondent's claim. C

In response to the foregoing submission wherein title to the respondent's vendor was put to question, his counsel Mr. Adegboyega sharply drew the court's attention to the pleadings and evidence adduced at the trial court and submitted that both parties derived their title to different piece of land from the same vendor, that is Chief Timothy Dada the owner of the wide expanse of land now known as Dada Estate, Osogbo. Copious and specific reference were related to the pleadings of both parties as well as the document exhibit "B" which learned counsel maintained are admissions and therefore in law needed no further proof. D E

On the further submission on behalf of the appellant wherein his counsel assessed the respondent as having fallen short of establishing the title of Chief Timothy Dada to the land in dispute, the respondent's learned counsel dismissed the contention as misconceived in view of the unimpeached findings of fact by the trial court which held that both parties relied on sale of land in dispute to them by different persons namely Chief Timothy Dada and Olanrewaju Ajibulu respectively. The learned counsel also maintained that the root of title of Chief Timothy Dada, wherein the land contained in Exhibit "B" is vested on the appellant is no longer in doubt. The respondent's counsel in the result applauded the findings by the trial judge that the respondent (plaintiff) from those facts and the law had discharged satisfactorily the onus of proof required of him in a civil case pertaining to the nature of his claim, and thus justifying the judg- F G H

ment given in his favour; that the appellant was not left in any doubt from the pleadings and the evidence by the respondent on the identity of the land in dispute as contained in exhibits A, B, C and D; that the respondent proved his title by authentic document of title recognized by law as derived from Chief Timothy Dada.

B Finally and in conclusion, it is the submission by the respondent's counsel that the findings of their Lordships in the lower court are based on compelling and conclusive evidence. The case of Ayorinde vs. Sogunro (2012) 11 NWLR (Pt. 1312) 460 at pp. 482 -
C 483 was cited in urging that the court resolve this issue against the appellant and dismiss the appeal.

I will restate the lone issue posed for the determination of this appeal which questions whether having regard to the facts and circumstances of this case the Learned Justices of the Court of Appeal
D were right when they held that respondent discharged the burden of proof as required by law to entitle him to judgment in this case?

From the Writ of Summons and the Statement of Claim, the subject matter of the suit at the trial court was in trespass and injunction. Plethora of authorities are well settled that
E ***where a claim for trespass is coupled with a claim for an injunction, the title of the parties to the land in dispute is automatically put in issue.*** See the cases of Olobunde v. Adeyoju (2000) 10 NWLR (Pt. 10) p. 562; Akintola v. Lasupo (1991) 3 NWLR (Pt. 180) page 508; Okorie v. Udom (1960) SC NLR p. 326; The Registered Trustees of the Apostolic Church v. Olowoleni (1990) 6 NWLR
F (Pt. 158) p. 514 and Ige v. Fagbohun (2001) 10 NWLR (Pt. 721) p. 468. ***The implication therefore holds true that the heavy weather made by the appellant in insisting that the respondent ought to have pleaded his title goes to no issue.***
G

By the very nature of pleadings, it contains statements of fact which are explicit in stating the case contested by the parties. Pleadings therefore serve a foundational nucleus of a case. Contested facts on pleadings give rise to issues which
H ***are to be proved by evidence. The absence of issues signifies admission and thus calls for no evidence. Admitted facts are never in issue and therefore need no proof.***

On the pleadings of the parties, it is obvious that in the case at hand and as rightly submitted by the respondent's counsel, the

parties derived their title from the same vendor; that is to say Chief Timothy Dada who is the owner of the wide expanse of land now known as Dada Estate, Osogbo. The confirmation is not far fetched with reference made to paragraphs 16, 17 and 18 of the Amended Statement of Claim which reproduction state as follows:-

“16. The plaintiff avers that Chief Timothy Dada (deceased) is also the vendor in respect of the defendant’s land which is about a plot away from the land in dispute across unnamed road forming boundary with the land in dispute as stated in paragraph 5 above. Chief Timothy Dada executed the Deed of Conveyance in respect of the said piece of land for the defendant. The Deed of Conveyance dated 9th day of February, 1973 and registered as No. 9 page 9 in volume 1462 of the Lands Registry in the office at Ibadan (now Osogbo) is hereby pleaded.

17. The plaintiff avers that the defendant build a house on the piece of land bought from Chief Dada. However, the land fell along the stretch of land acquired by the Government of Osun State for construction of the Osogbo Western By-pass express Road and the house thereon was consequently demolished. It was thereafter that the defendant trespassed onto the plaintiffs land.

18. The plaintiff avers that the land sold to the defendant by Chief Timothy Dada did not extend to the land in dispute and that the defendant had only unlawfully entered the land to start building construction on it despite repeated warnings from the plaintiff and his agent.”

In response to the foregoing averments, are paragraphs 3, 7, 8 and 10 of the amended statement of Defence wherein the appellant as the defendant said:-

“3. The defendant denies paragraphs 1, 8, 9, 16, 17 and 18 of the amended statement of claim and puts the plaintiff to strictest proof thereof.

7. With further reference to paragraph 16 of the amended statement of claim, the defendant admits to the extent that Chief Timothy Dada sold and conveyed to him a piece of land registered as number 9 at page 9 in volume 1462 of the Land Registry, Ibadan (now Osogbo) but he denies that the land is a plot away from the land in dispute.

8. With further reference to paragraph 17 of the amended

statement of claim, the defendant admits that he built a house on a portion of the said land from Chief Timothy Dada, and was acquired by Osun State Government for construction of the Osogbo Western Bye pass Express Road, hence the house was demolished.

10. *With further reference to paragraph 18 of the amended statement of claim, the defendant admits that the land he bought from Chief Timothy Dada does not extend to the land in dispute but denies that the land upon which his building is the land in dispute and belongs to the plaintiff."*

With particular reference made to paragraph 3 of the appellant/defendant's averment supra, same amounts to a general denial which in law is not sustainable as it is neither here nor there. For traverse to amount to a denial, it must be explicit, unequivocal and should not leave anyone in doubt as to the intention sought to portray. Objectivity should override subjectivity. When paragraph 3 is therefore taken together with paragraphs 7, 8 and 10 of the amended statement of Defence, it becomes obvious that the issues raised by parties on the title of the Respondent's vendor were admitted by the appellant.

For purpose of driving home the point further, the appellant had by his pleadings and evidence admitted that Chief Timothy Dada sold and conveyed to him a piece of land registered as Number 9 at page 9 in volume 1462 of the Land Registry, Ibadan, now Osogbo, to confirm the root of title of the Respondent's vendor on the land known as Dada Estate. This was the document tendered in evidence and marked Exhibit "B".

The law is long established and affirmed by this court in plethora of authorities that an admitted fact is no longer in issue. See the case of *Olufosoye & Ors vs. Olorunfemi* (1989) 1 NWLR (Pt. 95) 26. The same principle was also applied in the case of *Bunge & Anor. vs. Gov. Rivers State & Ors.* (2006) 12 NWLR (Pt. 995) 573 at 600 wherein this court held thus:

"When a fact is pleaded by the plaintiff and admitted by the defendant, evidence on the admitted fact is irrelevant and unnecessary. There is no dispute on a fact which is admitted"

Following from the foregoing deductions, it is evident upon sufficient admission that parties derived their title to different piece of land from the same source or vendor, that is to say Chief Timothy

Dada the owner of the wide expanse of land known as Dada Estate, Osogbo.

This fact must have formed the basis upon which the trial court's findings were predicated. The lower court, I hold, cannot therefore be faulted in affirming the judgment of the trial court. The learned counsel for the appellant in his further submission critically related to both the evidence called and also the exhibits tendered by the respondent and challenged that he (respondent) had not discharged the burden of proof required by law to entitle him to judgment. In otherwords, that the respondent had failed to call any evidence to establish the title of Chief Timothy Dada to the land in dispute. At page 40 of the record of appeal, lines 21-23, the learned trial Court Judge held that both parties relied on sale of land in dispute to them by different persons namely Chief Timothy Dada and Olanrewaju Ajibulu respectively. ***A long line of authorities have settled that in a case where both parties claim title to land, the court is more concerned with the relative strength of the party with better right who must be given the declaration. It is also elementary to restate that for the plaintiff to succeed, he must rely on the strength of his own case and not on the weakness of the defence, except, however, where such evidence of the defence manifestly supports the case of the plaintiff. The legal position is also well established wherein a plaintiff in seeking title to land has the onus to show how he or his predecessor in title has acquired such.***

It is well settled in our legal system that proof of title must be established through one of the five ways as laid down in the case of Idundun Vs. Okumagba (1976) 9-10 SC. 223 which are as follows:-

- (1) By traditional history or evidence or;
- (2) By documents of title;
- (3) By various acts of ownership, numerous and positive and extending over a length of time as to warrant the inference of ownership or;
- (4) By acts of long enjoyment and possession of the land and;
- (5) By proof of possession of adjacent land in circumstances which renders it probable that the owner of such ad-

jaçant land would in addition be the owner of the land in dispute.

The burden placed on the plaintiff is to prove at least one of the five ways and not conjunctively.

The same principle was also applied in the cases of *Mogaji v. Cadbury Ltd.* (1985) 2 B NWLR (Pt. 7) p. 373, *Ali v. Alesinloye* (2000) 6 NWLR (Pt. 40) p. 117, *Olohunde V. Adeyoju* (2000) 10 NWLR (Pt. 676) p. 562 and *Adesanya V. Aderounmu* (2000) 9 NWLR (Pt. 672) 370.

The Respondent as the plaintiff at the trial court testified in person and called three witnesses from the office of the Surveyor General of Osun State. He tendered Exhibits 'A', 'B', 'C' and 'D' to establish his title to the land in dispute through Chief Timothy Dada, the original owner. The appellant as defendant at the trial court also tendered Exhibits 'E' and 'F'. While exhibit T was expunged, exhibit D 'E' is a document which confirms that Chief Timothy Dada conveyed portion of the land contained in Exhibit 'B' to the appellant.

For proper comprehension of the documents, a further explanation made on each will reveal that the root of title of Chief Timothy Dada, wherein the land contained in Exhibit 'B' is vested on the appellant will no longer be in doubt. For instance, Exhibit 'A' is the Deed of Conveyance executed in favour of the respondent by Chief Timothy Dada in 1973, and registered as No. 43 at page 43 in volume 1502, of the office of the Lands Registry, Ibadan.

On the status of Exhibit 'B', it is the Deed of Conveyance executed in favour of the appellant by the same Chief Timothy Dada, on part of the Dada Estate. The Exhibit 'B' was registered as No. 9 at page 9 in volume 1462 of the Registry of Lands in the office at Ibadan.

Furthermore, Exhibit 'C' is a composite plan showing the exact location of the Lands in Exhibits 'A', 'B' in particular while exhibit 'D' is another copy of exhibit 'C'.

On the identity of the land in dispute, this is what the learned trial judge had to say at page 36 of the record of appeal.

"From the totality of the evidence adduced before me, I find it difficult to agree that the identity of the land in dispute is uncertain or unknown to the parties. On the contrary, I am inclined to hold that the parties are ad idem as to the location and identity of the land. If the identity of the land is uncertain and/or unknown to the defendant he would not have been able to identify it as being the

land over which he the defendant was farming on in 1975.”

I hasten to add that the foregoing findings of fact on identity by the trial court was affirmatively endorsed by the lower court at page 95 of the record of appeal wherein it has this to say:-

“The appellant went into the issue of identity of the land - because he held that the respondent does not know the land in dispute.

There is abundant evidence that both parties know the land in dispute as there is plan of the land attached to the conveyance Exhibit ‘A’, a composite plan Exhibit ‘C’ by a witness of the Respondent. Besides, the respondent gave the description as plot 11 along Tim Road - Chief Timothy Dada Estate Layout and gave the names of his boundary men.

While the appellant agreed in paragraph 13 of his amended statement of defence that he once farmed on the land in 1975 to the disapproval of Chief Timothy Dada who objected that the plot was not his own.

The court was convinced that the land in dispute was ascertained and both parties knew its identity.”

As rightly submitted by the learned counsel for the respondent therefore, the appellant was not left in any doubt from the pleadings and the evidence by the respondent about the identity of the land in dispute as contained in the exhibits ‘A’, ‘B’, ‘C’ and ‘D’. The concurrent findings of fact by both lower courts are obvious.

The law is well established, that under our adversarial system of jurisprudence, civil cases are decided on preponderance of evidence. See Mogaji V. Odofin (1978) 3 - 4 SC 91. ***In summary, before the trial court accepts or rejects the evidence of either side, it is expected of the judge to construct an imaginary scale of justice whereupon he is expected to weigh the evidence of both sides for purpose of determining to which side the pendulum will tilt; the determination which is not dependent upon number of witnesses called. It is rather the credibility that gives probative value to witnesses.***

In the evaluation of evidence therefore, the central focus expected of a trial court is whether it made proper findings upon the facts placed before it. In other words, as long as a trial court judge does not arrive at his judgment simply by

considering the case of one party and not the other but properly evaluate both sides, the decision will not be set aside merely because he adopts a method which is novel to the usual system. The measuring yardstick is the consideration of the totality of the entire case thus arriving at the just determination of the issues in controversy. The test is that of the perception by an ordinary reasonable man. See *Woluchem v. Gudi* (1981) 5 SC 291.

The trial court has the benefit of hearing and assessing the demeanour of witnesses. It is not within the powers of the appellate court to encroach upon that privilege by way of interfering with the trial judge's findings unless they are shown to be perverse, unsupported by evidence or based on evidence not legally admissible.

The respondent who was the plaintiff at the trial court gave evidence as P.W. 3. He traced his title to one Chief Timothy Dada in 1972 from whom he bought the land for N600.00 and the possession was handed over to him; that he caused the land to be surveyed in the same year of 1972 and the survey plan was handed over to him by the licensed surveyor called Odeleye. The conveyance was prepared and signed by Chief Dada before it was registered. The certified true copy of the Deed of Conveyance of the land was Exhibit 'A'.

It is evident to also restate that one Henry Adepetu who is an assistant Deed Registrar under the Bureau of Lands and Physical Planning testified as P.W.1. The witness in the course of his evidence tendered the Deed of Conveyance admitted and marked Exhibit 'A'.

One Rufus Olalekan Omisola a Surveyor with the State Ministry of Works and Physical Planning; Osogbo also testified as P.W. 2. The witness produced the survey plans between Chief Timothy Dada and the plaintiff. The document was admitted and marked Id. 'K'.

The appellant as a proof of his source of title alleged that his son transferred the land to him in January, 1978 and his son gave him a document to that effect. At the trial court, the two documents produced by the appellant were held as mere agreements of transfer of portion of land sold to his son by Sapo family. When Bello Ajani Sapo from the family who sold the land to the appellant gave evidence as D.W.2 he testified to the effect that he sold the land to the

appellant and his son; intriguingly, the witness could not identify the appellant's son to whom he sold the land. In his evidence in Chief for instance, this is what D.W. 2 said at page 23 of the record:

"I know the defendant in this case. I do not know Olanrewaju Ajibulu, but he should be Ajibulu's son. I know Olanrewaju Ajibulu in person, he is the son of Ajibulu... It was the father of Olanrewaju Ajibulu that bought land from me. I don't know the other name of Ajibulu that bought land from me. The said Ajibulu is now in court, he is the defendant. Later too, the son of the defendant Olanrewaju Ajibulu also bought another parcel of land from me... what I said earlier is that Olanrewaju Ajibulu is the son of the defendant."

The trial court at pages 41 - 42 of the record had the following to say on the evidence of D. W. 2:-

"The defence witness - Bello Ajani Sapo was very confused on this and other issues when he even denied knowing Olanrewaju D Ajibulu... From these conflicting pieces of evidence, it is difficult to believe the defence case as pleaded... certainly it was the defendant himself that the defence witness identified as the person to whom the land was sold"

The position of the law is well settled, that where a party relies and pleads a grant as his root of title, he is under a duty to prove such a grant to the satisfaction of the trial court.

In his judgment after having evaluated the evidence adduced by both parties, the learned trial court judge did not find it difficult on which side the pendulum of the scale of justice had tilted; hence the question: *"what better evidence has the defence put up to show that he has a better title to the land? None."* In the result, the court therefore had no difficulty in arriving at the following conclusion:-

"I have no difficulty as I earlier indicated coming to the conclusion that the plaintiff has established to my satisfaction his legal right to the exclusive possession of the land lying and being on plot No. 11 as shown in the survey plan No. WP89B/72 the Deed of Conveyance of 23-6-73 and on exhibits C and D respectively and I so adjudge."

The conclusion arrived thereat was sanctioned in toto by the lower court wherein it held at page 94 of the record and said:-

"The respondent had established to the satisfaction of the trial court that he acquired the land in dispute by sale whereupon, the

document of title the conveyance Exhibit 'A' was executed in his favour."

I cannot but concur with the conclusion arrived thereat by the lower court without more and I also endorse same. The judgment of the Court of Appeal which affirmed that of the trial court is also endorsed by me. The appeal in the result is lacking in merit and dismissed. I further award costs of N100,000.00 in favour of the respondent against the appellant.

Appeal is dismissed with costs of N100,000.00k in favour of the respondent.

MOHAMMED JSC

This appeal is against the judgment of the Court of Appeal Ibadan Division delivered on 16th July, 2003 affirming the judgment of the trial High Court of Justice of Osun State sitting at Osogbo and delivered on 30th April, 1999 in favour of the Respondent.

The Respondent was the Plaintiff at the trial Court where he brought an action against the Appellant claiming damages for trespass and perpetual injunction for acts of trespass upon the Respondent's Plot No. 11 in Dada Estate Layout along Timi Road in Egbedore Local Government Area of Osun State covered by a Deed of Conveyance registered as No. 43 at page 43 in volume 1502 of the Land Registry in the office at Ibadan. At the conclusion of the hearing in the case, the learned trial Judge was satisfied on the evidence before him that the Respondent had been able to establish his case and therefore granted the reliefs claimed by the Respondent against the Appellant. Not satisfied with the outcome of the case at the trial Court, the Appellant appealed to the Court of Appeal Ibadan Division which after hearing the appeal, affirmed the decision of the trial Court and dismissed the appeal. The Appellant is now on a further appeal to this Court and in the Appellant's amended brief of argument, only one issue was framed for the determination of the appeal. The lone issue is -

"Whether having regard to the facts and circumstances of this case the learned Justices of the Court of Appeal were right when they held that the Respondent discharged the burden of proof as required by law to entitle him to judgment in this case"

It is elementary principle of law that whenever a claim for trespass is accompanied with a claim for an injunction, the title of the parties to the land in dispute is automatically put in issue and the Plaintiff to succeed, must establish a better title than that of the Defendant. See *Fasikun II v. Olorunke* (1999) 2 NWLR (Pt. 589) 1 and *Olohunde v. Adeyoju* (2000) 10 N.W.L.R. (Pt. 676) 562 at 580. This is exactly what the Respondent did at the trial Court in this case by adducing evidence in proof of his title by producing authentic documents of title made up of the Deed of Conveyance and the Survey Plans Exhibits C and D, one of the recognized 5 ways of proving title to land under the law as prescribed by this Court in *Idundun v. Okumagba* (1976) 9 - 10 SC 223. The Court below was therefore on very solid ground in affirming the judgment of the trial Court and in dismissing the Appellant's appeal.

For the foregoing reasons and fuller reasons contained in the lead judgment of my learned brother Ogunbiyi JSC which I have had the privilege to read before today and with which I entirely agree. I also see no merit at all in this appeal which is hereby dismissed. I consequently abide by the orders in the lead judgment, the order on costs inclusive.

CHUKWUMA-ENEH JSC

I have read in draft the lead judgment of my learned brother Ogunbiyi JSC and his exhaustive treatment of the lone issue raised for determination in this appeal. I have nothing meaningful to add consequently I adopt the same as mine and accordingly dismiss the appeal as lacking in merit. I abide by the orders contained therein.

ARIWOOLA JSC

I had the opportunity of reading in draft the lead judgment just delivered by my learned brother, Ogunbiyi, JSC. I agree entirely with the reasoning and the conclusion arrived thereat, that the appeal lacks merit and deserves to be dismissed. Accordingly, it is dismissed by me.

I abide by the consequential order including that on costs in the lead judgment.

AKA’AHS JSC

The plaintiff (now respondent) instituted the action before the High Court of Justice of Osun State sitting at Oshogbo in Suit No. HOS/12/97 claiming against Chief D. B. Ajibulu as Defendant (now deceased) damages for trespass and injunction. The plaintiff's case is that he became vested with the title to the land in dispute by a Deed of Conveyance registered as No. 43/43/1502 of the Lands Registry in Ibadan. The Deed of Conveyance was executed in his favour by Chief Timothy Dada (now late) in 1972. The said Deed of Conveyance was tendered and received in evidence as Exhibit “A”. Sometimes in 1996 he discovered that the defendant was trespassing on the land in dispute by putting thereon a building. He sent his agents to the defendant to intimate the latter that he was the bona-fide owner of the disputed land but the defendant refused to acknowledge this fact; hence he instituted the action.

The defendant on the other hand disputed the title of Chief Timothy Dada to the disputed land and stated that Chief Timothy Dada had once told him in 1975 that he (Timothy Dada) was not the owner of the land but rather it belonged to the Sapa family and it was from the Sapa family that his son, Mr. Olanrewaju Ajibulu subsequently bought a large expanse of land including the land in dispute. The defendant however admitted buying a different parcel of land from Chief Timothy Dada upon which he erected his first building which was later acquired by the Osun State Government for the purpose of constructing the express road. The defendant also maintained that although Chief Timothy Dada had plots of land adjacent to the land in dispute, the negotiation for the purchase of the disputed land by Chief Timothy Dada was never concluded with the Sapa family. The defendant also maintained that the land which he bought from Chief Timothy Dada which was received in evidence as Exhibit “B” did not extend to the land in dispute.

The learned trial Judge found in favour of the plaintiff by holding that all he needed was to tender Exhibit “A” and there was no necessity on his part to prove the title of Chief Timothy Dada since no issue was joined by the parties on the title held by Chief Dada to the land. The judgment of the High Court was affirmed by the Court of Appeal and on 20/8/2003, the Appellant appealed to

this Court. The appeal was pending in this Court when the appellant died sometime in 2008. His estate represented by Mrs. Rachel Mobolaji Alabi brought an application dated 7/2/2012 and filed on 8/2/2012 in which she sought leave of this Court to be substituted for the appellant and also leave to prosecute the appeal in a representative capacity. The application was taken and granted on 18/2/2013. B

The issue raised in the appellant's brief filed on 29/6/2012 but deemed filed on 3/10/2012 read as follows:

"Whether having regard to the facts and circumstances of this case the learned Justices of the Court of Appeal were right when they held that the respondent discharged the burden of proof as required by law to entitle him to judgment" C

In his brief of argument, learned counsel for the appellant referred to paragraphs 4, 5 and 6 of the Amended Statement of Claim and paragraphs 3, 5, 6, 19 and 13 of the Amended Statement of Defence as well as paragraphs 1 and 3 of the Amended Reply to the Amended Statement of Defence and submitted that issue was joined as to who originally owned the land in dispute between Chief Timothy Dada and Alhaji Ajani Sapa and that the respondent did not discharge the burden of proof required by law to entitle him to judgment. E

Learned counsel for the respondent in adopting the lone issue framed by the appellant, referred to paragraphs 16, 17 and 18 of the Amended Statement of Claim which were admitted by the Appellant in paragraphs 7, 8 and 10 of the Amended Statement of Defence and confirmed by the evidence led before the trial court showed that the parties derived their title to different pieces of land from the same vendor namely Chief Timothy Dada. F

My learned brother, Ogunbiyi, JSC reproduced the relevant paragraphs of the pleadings and concluded that the title of the respondent's vendor was admitted by the appellant namely that it was Chief Timothy Dada who sold and conveyed to him a piece of land registered as No. 9 at page 9 in volume 1462 of the land registry Ibadan. H

If plot No 11 in Dada Estate which is the disputed land was sold to the respondent while the adjacent plot 9 also located in the same Dada Estates was sold to the appellant, it is reasonable to presume that it was the same vendor who owned the two plots. More-

over the evidence adduced is to the effect that Chief Timothy Dada owned a large expanse of land which was surveyed and partitioned into plots and he sold plot No. 9 to the appellant while the respondent took plot No. 11. This being the case the root of title to the disputed land rests with Chief Timothy Dada and the argument by the appellant that the respondent ought to call evidence to prove Chief Dada's root of title is completely misplaced. Chief Timothy Dada's title to the disputed land cannot be impugned merely by the appellant's assertion that Chief Timothy Dada had told him he negotiated to buy the land from Alhaji Ajani's family but the deal was not concluded. This piece of evidence is hearsay and if the appellant wanted to follow that course of argument to its logical conclusion, the onus of proving that Chief Timothy Dada had no valid title to the land rested squarely on his shoulders and he was bound to call Alhaji Ajani Sapa to testify. The respondent had no burden to discharge.

I find that there is no merit in the appeal and I accordingly dismiss it. I further affirm the judgment of the Court of Appeal, Ibadan delivered on 16/7/2003 in appeal nos. CA/I/M. 166/99 and CA/I/134/2000 and award costs of N100,000.00 in favour of the respondent against the appellant.

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