

SUPREME COURT OF NIGERIA
FRIDAY 28TH FEBRUARY, 2014. SC. 247/2005
CORAM:- W. S. N. ONNOGHEN, M. S. MUNTAKA
COOMASSIE, K. B. AKA'AH, K. M. O. KEKERE-EKUN,
J. I. OKORO, JJSC

1. CHUKWUEMEKA ANYAFULU
 2. SAMUEL UMUNNA
 3. JONATHAN UDEKWE APPELLANTS
 4. EDWIN EKWUNO
 5. CHARLES ADIEME
 - AND
 1. MADUEGBUNA MEKA
 2. EMMANUEL EJIOFOR
 3. GABRIEL IREDU RESPONDENTS
 4. DAVID IREDU
 5. OGUEJIOFOR EJIOFOR
 6. EMMANUEL IREDU
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APPEALS - Evidence - Evaluation - Where assessment of credibility of witnesses is not involved - Appellate court can make evaluations which are of law - And on the basis of pleadings of parties and evidence (H1)

LAND LAW - Title - Traditional history - Proof - Where evidence of tradition is relied upon - Plaintiff must plead and establish founder of the land - How he founded it - And particulars of intervening owners through whom he claims (H2)

LAND LAW - Communal land - Alienation - Where such land belongs to every member of the community - The management of same is vested in family head - Who acts as trustee and is required to consult other family members - Before alienation of the land (H3)

LAND LAW - Title - Traditional history - Failure to proof - Effect - Appellant's case is dismissed as they have failed to discharge burden on them - To establish link with Abua and the disputed land (H4)

LAND LAW - Title - Possession - Proof - Where a party pleads traditional title and acts of possession - He can rely on the latter where evidence of traditional history is inconclusive (H5)

EVIDENCE - Evaluation - Fair hearing - Evidence adduced by PW1 was demolished under cross exam and nothing was left to evaluate - Hence there was no lack of fair hearing - When appellants' case was dismissed based on insufficiency of pleadings (H6)

FACTS

Before the High Court of Anambra State sitting in Onitsha, plaintiffs/appellants (in representative capacity) commenced this action against defendants/respondents (in representative capacity), seeking for declaration of title, recovery of possession and injunction in respect of a parcel of land known as "Umuru" land situate in Obosi on the ground that the land is the family property of the Umuabua family of Obosi, which includes respondents who belong to the Umu-Ademe kindred within the Umuabua family. In their amended statement of claim appellants pleaded that the land in dispute is commonly owned by the descendants of Abua (one of the four sons of the original founder Ezuga a.k.a. Dezuga). That the land was divided among Ezuga's sons upon his death. They averred further that they are descendants of Abua. However, appellants failed to plead particulars of intervening owners from Abua to themselves.

On their own part, respondents admitted being descendants of Abua but denied appellants' claim that the aforesaid Ezuga founded the disputed land. They contend that Ademe the grandson of Abua founded the land and that they are his descendants. Respondents therefore traced their intervening ancestors from Ademe down to themselves and pleaded that the land had devolved on the descendants through the years as family property without being partitioned. Witnesses were called and documents tendered in the matter. In its judgment, the court non-suited appellants and made no findings on the evidence adduced by the parties. The decision of the court was not satisfactory to the parties. Hence, both parties appealed to the Court of Appeal Enugu Division against the trial court's order of non-suit. Respondents' appeal was treated as the main appeal. The appeal on non-suit was allowed since the parties were not invited to

address the trial court before the order was made. The court proceeded on its powers under Court of Act s. 16, to evaluate the evidence and pleadings before the trial court. It held that appellants were unable to plead their root of title in respect of the land. Appellants' appeal (treated as cross-appeal) was dismissed in the circumstance. Aggrieved, appellants appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the learned Justices of the Court of Appeal were right in dismissing the appellants' case for insufficiency or inadequacy of pleadings in support of their traditional history when the pleadings were sufficient to support the appellants, traditional history and warrant a declaration of title in their favour.

2. Whether the failure of the court below to consider the acts of ownership and possession pleaded by the plaintiffs/appellants before it dismissed the appellants' case for insufficiency of pleadings of their traditional history did not constitute a breach of the appellants' right to fair hearing and a miscarriage of justice.

3. Whether the court below was right in shifting the burden of proof to the plaintiffs/appellants when from the pleadings and/or the evidence the burden of proof lies with the defendants/respondents who are claiming exclusive title as against the plaintiffs/appellants who are claiming communal title.

4. Whether the court below was right in dismissing the suit when the plaintiffs/appellants are entitled to the declaration of title having regard to their pleadings and evidence before the Court.

5. Having held that it has the power under section 16 of the Court of Appeal Act to evaluate the evidence whether the court below was right in not evaluating the evidence before dismissing the suit which if done, it could have found that the plaintiffs/appellants are entitled to judgment.

1. Whether the Appellate Court has the right to make finding of facts where credibility of witnesses is not involved.

HELD (Unanimously dismissing the appeal per

AKA'AH'S JSC)

Evidence - Evaluation

1. The Respondents' issue 1 will be disposed of peremptorily. The Court of Appeal in its Judgment had stated clearly that the appellate court can make evaluations which are of law and on the basis of pleadings of the parties and the evidence. It entered the caveat that what the appellate court cannot do
 B **is to assess the credibility of witnesses and relied on the statement of Eso JSC in Ebba vs Chief Warri Ogoto (1984) 4 SC 84 at 99 which was applied in Narumal & Sons vs N.B.T.C. LTD (1939) 2 NWLR (Part 106) 730. So if the evaluation of**
 C **the evidence in this case does not touch on the credibility of the witnesses, notwithstanding the fact that the learned trial Judge failed to evaluate the evidence, the evidence adduced can be evaluated even in the Supreme Court. (p. 772 A)**

D *LAND LAW - Title - Traditional history - Proof*

2. A plaintiff who claims ownership of land through inheritance must plead and give evidence of the persons who have held title or on whom title devolved in respect of the land before the plaintiff took control of the land. Where evidence of
 E **tradition is relied upon in proof of declaration of title to land, the plaintiff in order to succeed must plead and establish the following facts:**

- (i) Who founded the land
- (ii) How he founded it; and
- F (iii) The particulars of the intervening owners through whom he claims down to him.

The pleadings and evidence as regards inheritance from Abua down to the plaintiffs hangs in the air. It stopped at Abua and
 G **did not show any descent from Abua to the plaintiffs.**
 (p. 776 F)

LAND LAW - Communal land - Alienation

3. Learned counsel for the plaintiffs/appellants' stand on the
 H **sufficiency of the pleading argued that it will be absurd for the plaintiffs who claimed the land as communal property to plead individual or subfamily ownership of the land as that will be in conflict with the communal ownership. Although it is judicially noticed that where a family owns a piece or parcel of land**

communally, the title of the ownership remains with the family until and unless there is a partition; nevertheless from the principle adumbrated in Ekpendu vs Erika (1959) SCNLR 186 where such communal land belongs to every member of the community past, present and yet to be born, the management of such communal land is vested in the head of the family who is in the position of a trustee and is required to consult other principal members of the family before he can alienate the land. (p. 777 A) B

LAND LAW - Title - Traditional history - Failure to proof - Effect C
4. The consequence of not establishing a line of descent from Abua to the present plaintiffs is that they have failed to establish their link as a community with Abua and the land in dispute. There is no burden of proof placed on the defendants since they did not counter claim for declaration of title. The burden of proof remained with the plaintiffs who were bound to fail if no evidence was adduced on either side. D

Even if the lower court had evaluated the evidence, it would still have dismissed the plaintiffs' case because of the missing link in the pleadings and evidence between Abua and the plaintiffs. Issues 1, 3, 4 and 5 are therefore resolved against the appellants in favour of the respondents. (p. 779 E) E

LAND LAW - Title - Possession - Proof F
5. One of the five ways of proving title to land as enunciated in Idundun vs Okumagba (1976) 9 - 10 SC 227 is by various acts or possession and ownership, numerous and positive extending over a length of time as to warrant an inference of ownership. Where a party pleads traditional title and also acts of possession and ownership, the party can rely on the latter to prove his case where the evidence of traditional history is inconclusive. (p. 780 B) G

EVIDENCE - Evaluation - Fair hearing H
6. The evidence adduced by PW1 was demolished under cross - examination and nothing was left to evaluate which would have tilted the case in favour of the plaintiffs.

Therefore no miscarriage of justice was occasioned to the plaintiffs in the two lower courts not evaluating the evidence nor was there lack of fair hearing by the lower court when it dismissed the plaintiffs' case based on insufficiency of pleadings. For any evidence to be cogent, it must be based on pleaded facts. Issue No. 2 is equally resolved against the appellants in favour of the respondents. (p. 781 C)

NOTABLE POINT OF INTEREST

C **ONNOGHEN JSC**

1. Land law - Plaintiff succeeds on the strength of his case

Also settled law is the principle that a plaintiff must succeed on the strength of his case and not on the weakness of the defence, though in an appropriate case, a plaintiff can rely on the weakness of the defence to establish his claim. Where that exception operates it must be seen clearly that the case of the defence, which constitutes its weakness, supports the facts pleaded by the plaintiff otherwise it is worthless, as same would have no evidential value. (p. 782 A)

E **REPRESENTATION**

Tochukwu Onwugbufor SAN with M. O. Onwugbufor and U. Aghadiuno, for the Appellants
Rob Iweka SAN with A. N. Iweka, for the Respondents

F **CASES REFERRED TO**

- Ebba v. Ogodo (1984) 4 SC 84
- Narumal & Sons v. N.B.T.C. Ltd. (1939) 2 NWLR (pt. 106) 730
- Piaro v. Tenalo (1976) 12 SC 31
- G Nkado v. Ebiano (1997) 5 NWLR (pt. 503) 31
- Eze v. Atasie (2000) 10 NWLR (pt. 676) 470
- Ekpendu v. Erika (1959) SCNLR 186
- Ekpo v. Ita (1932) II NLR 68
- Balogun v. Akanji (1988) 1 NWLR (pt. 70) 301
- H Nwokorobia v. Nwogu (2009) 10 NWLR (pt. 1150) 553
- Shell B. P. v. Abedi (1974) 1 SC 23
- Ebosie v. Phil-Ebosie (1976) 7 SC 119
- George v. Dominion Flour Mill Ltd. (1963) 1 ALL NLR 71

LEAD JUDGMENT BY AKA'AH'S JSC

The Plaintiffs and Defendants are natives of Obosi. Both parties are members of Umuabua family but the Defendants belong to Umu-Ademe sub-family of Abua. The plaintiffs brought the action in a representative capacity against the Defendants also in a representative capacity claiming that the land in dispute which they call "Umuru" is owned communally by both parties through inheritance. The defendants denied this claim and asserted that they owned the land absolutely. The plaintiffs trace the occupation of the land to Ezuga, their common ancestor, who hailed from Ire Village. According to the traditional history of Obosi, an Umuru man was found guilty of having committed adultery and was asked to pay a penalty for the crime (which was yams). When he presented the yams, the quantity and quality were found to be unsatisfactory. The man became enraged and he killed the Eze and his pregnant daughter. Fearing the repercussions that would follow the killings, the man and his kinsmen decided to relocate from Umuru to another place. Ezuga (also known as Dezuga) moved in to occupy the land left by the fleeing Umuru people and after his death the land was then partitioned among his four children namely Chiakwelu, Abua, Odogwu (also known as Nyi) and Oliobi. The plaintiffs claim that both themselves and the Defendants are descendants of Abua and the portion of land which Abua inherited was never partitioned between his children; hence it is now communal land belonging to the parties.

The Defendants' version is that even though they and the Plaintiffs are descendants from Abua, the ancestor did not inherit any land. They claimed that Abua had two sons namely: Nwokebuahi and Oradusi. Oradusi in turn had four children namely: Emokamobi, Okolonkwo, Umunna and Ademe. It was Ademe their forefather who deforested the land. They the Defendants are the members of Umu Ademe kindred in Umuabua family and so are exclusively entitled to the said land.

The suit was heard on the Amended pleadings of the plaintiffs dated 15th January, 1998 but filed on 12th February, 1998 (see pages 95 - 102 of the records) and the Further Amended Statement of Defence dated 29th January, 1998 and filed on 30th January, 1998 (see pages 49 - 57 of the records). The plaintiffs called four

witnesses while six witnesses testified for the Defendants. Several exhibits were tendered. In the judgment delivered on 17th December, 1998, the learned trial Judge before non-suiting the plaintiffs said:-

B *"I found it difficult to understand and appreciate the two main grounds relied upon by the plaintiff and also by the defendants in this suit for their claim to the land in dispute as shown on exhibit A', thereon verged pink or as shown on exhibit ,B', therein verged red. I have deliberately refrained myself from making any specific findings of fact on the evidence proffered and adduced by each party"* (See page 2 of the records)

C Both parties were dissatisfied and appealed against the order of non suit. The Defendants appeal was treated as the main appeal. They complained that there was failure by the plaintiffs to plead and testify on the line of succession from the original founder to the plaintiffs and the evidence of the plaintiffs' witnesses which were contradictory resulting in serious internal conflicts regarding the traditional ownership of the disputed land.

E The Court of Appeal Enugu delivered its judgment on 31st of May, 2005 allowing the appeal on the issue of non suit since the parties were not invited to address the trial Judge before the order was made. It went further to invoke section 16 of the Court of Appeal Act to evaluate the evidence and the pleadings before the trial court and arrived at the conclusion that the Plaintiffs failed to plead how the land passed through successive owners to them and held F that with this failure, there was no way that the burden of proving exclusive ownership of the disputed land could have shifted to the appellants. The Court held that the respondents' claim was bound to fail because of the inadequacy in their pleadings. The Court below G dismissed the cross - appeal with N10,000.00 costs to the appellants.

The Plaintiffs have now appealed to this Court on seven grounds of appeal from which they formulated five issues for determination. The issues are:-

H 1. Whether the learned Justices of the Court of Appeal were right in dismissing the appellants' case for insufficiency or inadequacy of pleadings in support of their traditional history when the pleadings were sufficient to support the appellants, traditional history and warrant a declaration of title in their favour.

2. Whether the failure of the court below to consider the acts

of ownership and possession pleaded by the plaintiffs/appellants before it dismissed the appellants case for insufficiency of pleadings of their traditional history did not constitute a breach of the appellants right to fair hearing and a miscarriage of justice.

3. Whether the court below was right in shifting the burden of proof to the plaintiffs/appellants when from the pleadings and/or the evidence the burden of proof lies with the defendants/respondents who are claiming exclusive title as against the plaintiffs/appellants who are claiming communal title. B

4. Whether the court below was right in dismissing the suit when the plaintiffs/appellants are entitled to the declaration of title having regard to their pleadings and evidence before the Court. C

5. Having held that it has the power under section 16 of the Court of Appeal Act to evaluate the evidence whether the court below was right in not evaluating the evidence before dismissing the suit which if done, it could have found that the plaintiffs/appellants are entitled to judgment. D

The respondents in their brief formulated seven issues for determination as follows:-

1. Whether the Appellate Court has the right to make finding of facts where credibility of witnesses is not involved. E

2. Whether the Plaintiffs/Appellants who claim ownership of the land through inheritance/traditional history must plead and give evidence of:

(a) The persons who have held title or on whom title devolved in respect of the land before the plaintiffs took control of the land and what is the effect of failure to do so. F

3. Whether Plaintiffs/Appellants who rely on inheritance/traditional history as root of title can simultaneously rely on acts of ownership as root of title. G

4. Whether the decision in Ekpo vs Eyo is applicable in this case.

5. Whether on the state of the pleadings and evidence led, it is the Plaintiffs/Appellants or the Defendants/Respondents who have the burden of proof. H

6. Whether the Appellants were given a fair hearing.

7. Whether plaintiffs/Appellants proffered two competing traditional histories for the ownership of the land and what is the effect.

The Respondents' issue 1 will be disposed of peremptorily. The Court of Appeal in its Judgment had stated clearly that the appellate court can make evaluations which are of law and on the basis of pleadings of the parties and the evidence. It entered the caveat that what the appellate court cannot do is to assess the credibility of witnesses and relied on the statement of Eso JSC in Ebba vs Chief Warri Ogoto (1984) 4 SC 84 at 99 which was applied in Narumal & Sons vs N.B.T.C. LTD (1939) 2 NWLR (Part 106) 730. So if the evaluation of the evidence in this case does not touch on the credibility of the witnesses, notwithstanding the fact that the learned trial Judge failed to evaluate the evidence, the evidence adduced can be evaluated even in the Supreme Court.

The central issue in this appeal revolves around the pleadings. Learned counsel for the appellants submitted that since the plaintiffs claimed the land in dispute as a communal land of Umuabua which belongs to all descendants of Abua and not as personal or individual property inherited by them, their pleadings in paragraphs 11 and 14 of the Amended Statement of Claim and the admission made by DW1 on the common ancestry of the parties in Abua were sufficient to warrant the learned trial Judge entering judgment in favour of the plaintiffs. He argued that it will be absurd for the plaintiffs to plead individual or subfamily ownership of the land as that will be in conflict with the communal ownership amounting to the plaintiffs, setting up conflicting titles, one as family communal land and the other as family property. Learned counsel sought to distinguish this case from that of *Piaro vs Tenalo* (1976) 12 SC 31 by arguing that there is no sweeping statement that the land is communal land since the pleadings revealed the following:-

1. The founder of the land
2. The person on whom the land devolved i.e. Abua
3. Both plaintiffs and defendants are descendants of Abua
4. Abua's land is vested in all his descendants including the plaintiffs and defendants communally and not individually or on a subfamily
5. Abua has various lands in Obosi which are communally owned by all his descendants including the land in dispute which have been registered since 1978

6. The only person who is in charge of all Abua's communal lands is Diokpa

7. The land has not been partitioned.

He therefore submitted that there is undisputed linkage between the land in dispute and the plaintiffs who are claiming communally and not by descent from a subfamily or individual. B

Learned counsel for the respondents argued that the defendants put the inheritance of the disputed land by Abua in issue by denying the fact that Abua inherited the land from Ezuga and traced the origin of the land to Ademe who was an offspring of Abua. C

The relevant pleadings dealing with the issue are paragraphs 5, 6, 7, 9, 10, 11 and 14 of the Amended Statement of Claim and paragraphs 5, 6, 7, 8 and 9 of the Further Amended Statement of Defence. The pleadings are reproduced as follows:-

AMENDED STATEMENT OF CLAIM D

5. It is a notorious fact in Obosi that several generations ago, an Umuru man (to whom the land in dispute originally belonged):-

"...was found guilty of adultery, and according to the usual punishment in the olden days at Obosi for this crime, the Eze and Ndichies went and demanded from him the payment which, as a result, he should first give them before undertaking that of the parry whom he had offended. At that time, the man invited them to his house in order to pay same with yams, but during the dispute as to the quality and quantity of yams to be taken, he instantaneously killed the Eze on the spot and then escaped. On his way, he met the daughter of the Eze, a wife of a man of Ugamuma quarter who was in pregnant state, killed her also and ran away" per HISTORY OF OBOSI AND IGBO LAND PER FRANK O. THOMAS. F

6. In apprehension of what is to follow, the people of Umuru fled, leaving behind their houses, yams and domestic animals. G

The first village they passed after fleeing their homestead was Umuota who were the first to arrive at the deserted IMURU. They pillaged and looted the Umuru Village. When people of the next village, Ire (i.e. the plaintiffs, village) reached Umuru, they discovered that all the property belonging to Umuru people had been looted except land. The Ire people then scrambled for and partitioned most of the lands to Umuru people. H

7. It was in the course of this scramble that EZUGA (some-

times called DEZUGA) acquired the entire pieces or parcels of land shown verged brown (which includes the land in dispute) in the Plaintiffs' plan supra.

9. After the events pleaded in paragraphs 6 and 7 supra, Ezuga took and had exclusive possession and enjoyment of the said piece or parcel of land. He, inter-alia farmed same, let portions thereof to occasional and seasonal farmers and planted and reaped economic fees thereon. These acts of ownership were exercised without let or hindrance and without reference to anyone.

10. Ezuga begat
(a) Chiakwelu
(b) Abua
(c) Odogwu (Nyi) and
(d) Oliobi

11. On Ezuga's demise his vast estate (which included the land in dispute) was shared amongst his sons supra and the portion now in dispute went to Abua as his own part of the estate of his father.

14. The Plaintiffs are descendants of Abua (son of Ezuga) and, like the descendants of the other children of Abua supra, inherited the land in dispute which went to Abua as his own part of the estate of his father".

The Defendants in their further amended Statement of Defence pleaded as follows:-

"FURTHER AMENDED STATEMENT OF DEFENCE

5. Paragraphs 5, 6, 7, 8, 9 are most vehemently denied and the plaintiffs are put to the strictest proof thereof. The story about Umuru is very irrelevant and has nothing to do with the land in dispute. Dezuga a contemporary of Eze Shime had lived and died long before the incident at Umuru which happened during the reign of King or Eze Mesa 2.

5a) Eze Mesa 2 was the 9th King or Eze from the Royal family of Eze Shime of Obosi as follows:-

1) King or Eze Shime
2) King or Eze Ague 1 (Alias Eze Obodouku)
3) King or Nkueze (Alias Eze Obodo Nkibua)
4) King or Eze Mesa 1
5) King or Eze Agu 2

6) *King or Eze Olu 1*

7) *King or Eze Konye*

8) *King or Eze Akwagu*

9) *King or Eze Mesa 2*

10) *King or Eze Onyekwuluje...*

5b) It was King or Eze Mesa 2 who

“was assassinated with one of his daughters by an Umuru man shortly after his accession to the throne...”

The defendants here plead and shall rely on the History of Obosi and of Ibo - land in brief written by Mr. I. E. Iweka - Nuno (Eze Iweka 1 of Obosi) partially translated from the Ibo copy - particularly at pages 35 - 39.

6. Paragraph 10 is admitted

7. Paragraphs 11, 12, 13 are vehemently denied. The land in dispute has nothing to do with such sharing if ever. The plaintiffs are put to the strictest proof of their averments.

8. In answer to paragraph 14, the defendants admit that the plaintiffs are descendants of Abua (son of Ezuga) out vehemently deny that any portion of the land in dispute was so inherited by Abua from Dezuga.

9(i) Adike the founder of the town of Obosi begat Oba and Okodu.

Okodu begat Nnebo, Uru and Owolebe. Nnebo begat Ota and Ireh. Ota begat Ivita who begat Ozeozim/Okwasala, Shime. Ireh begat Dezuga, Dejilo, Ezech then Nnakwa. Shime, Dezuga Dejilo, Ezech were of the foremost ancestral heads of families established in Umuota and Ireh Obosi. Shime became the first King of Obosi. The defendants here plead and shall rely on the same History of Obosi referred to in paragraph 5 above (particularly at page 12 of the book).

9(ii) Dezuga begat Oli - Obi, Nyi (Odogwu Ezuga), Abua, Chiakwelu. Plaintiffs and Defendants descend from Abua.

Abua begat two children namely:- Nwokebuahi and Oradusi.

Oradusi begat four children namely:- i) Emokamobi, ii) Okolonkwo, iii) Umunna and iv) Ademe.

9(iii) Ademe, begotten of Oradusi, was a hunter, farmer and native doctor. He was the first to deforest the land in dispute when it was virgin. He cultivated and established exclusive possession of the land which is now in dispute and it passed down as such to his de-

scendants unpartitioned by inheritance jointly. Ademe (Oradusi) begat Anyoko who begat Meka and Nwangwu. Meka begat Ejiofor and Iredu. The defendants are the descendants of Meka, Iredu and Ejiofor.

9(iv) The ancestors of the defendants farmed the land and had since established without break exclusive possession and exercised maximum acts of ownership continuously and peacefully over the land now in dispute without let or hindrance.

9(v) The last of defendants ancestors within living memory who exercised such maximum acts of ownership and possession was Iredu Ozokwelu the grandfather of 3rd, 4th and 6th defendants. He farmed the land also as “Ani Uno” and allotted portions of the same for farming to members of the Umu Ademe family and to some members of extended family units of Umuabua in need. Other family units have their own Ani Uno.

9(vi) The said Iredu Ozokwelu was over 100 years when he died and was buried about 1928. The land was not partitioned and has remained so to today. He was succeeded by another descendant of Umu Ademe alive, Richard Iredu who also died in 1951. Obidogbo Ejiofor of the defendants, family then succeeded him until Jonas Iredu and Isaiah Iredu returned to Obosi and joined Obidigbo Ejiofor. A Survey plan of the land was made as far back as 1978 No. MEC/6583/78 of 4th January, 1978.

This will be relied upon at the trial. The last of them died in 1987 when 3rd defendant took over”.

A plaintiff who claims ownership of land through inheritance must plead and give evidence of the persons who have held title or on whom title devolved in respect of the land before the plaintiff took control of the land. Where evidence of tradition is relied upon in proof of declaration of title to land, the plaintiff in order to succeed must plead and establish the following facts:

- (i) ***Who founded the land***
- (ii) ***How he founded it; and***
- (iii) ***The particulars of the intervening owners through whom he claims down to him.*** See: Nkado vs. Ebiano (1997) 5 NWLR (Part 503) 31; Eze vs Atasie (2000) 10 NWLR (pt. 676) 470.

The pleadings and evidence as regards inheritance from Abua down to the plaintiffs hangs in the air. It stopped at Abua

and did not show any descent from Abua to the plaintiffs. Learned counsel for the plaintiffs/appellants' stand on the sufficiency of the pleading argued that it will be absurd for the plaintiffs who claimed the land as communal property to plead individual or subfamily ownership of the land as that will be in conflict with the communal ownership. Although it is judicially noticed that where a family owns a piece or parcel of land communally, the title of the ownership remains with the family until and unless there is a partition; nevertheless from the principle adumbrated in *Ekipendu vs Erika* (1959) SCNLR 186 where such communal land belongs to every member of the community past, present and yet to be born, the management of such communal land is vested in the head of the family who is in the position of a trustee and is required to consult other principal members of the family before he can alienate the land. This position is occupied by the "Diokpa" as submitted by learned appellants, counsel in seeking to distinguish this case from *Piaro v. Tenalo* (1976) 12 SC 32 and in the contention that there is no sweeping statement that the land is communal land.

The pleading started with when Ezuga (Dezuga) occupied the land. Thereafter after Ezuga, the land was partitioned amongst the four children of Ezuga. Abua was one of these four children and both the plaintiffs and defendants descended from him. The claim by the plaintiffs is that the land was never partitioned after Abua's death and so it has remained communal land since Abua's death. The plaintiffs have the duty of pleading the successive Diokpas who have managed the land from the time Abua died right up to when the plaintiffs went to court. The plaintiffs did not lead evidence to show the direct children of Abua. PW3, Ernest O. Muotonya who testified that both the plaintiffs and defendants are from Umuabua family did not know Abua's direct children. In *Eze vs Atasie* supra Uwaifo JSC stated the legal position at page 482 thus:

"The law is that to establish the traditional history of land relied on as root of title, a plaintiff must plead the names of the founder and those after him upon whom the land devolved to the last successor(s) and lead evidence in support without leaving gaps or creating mysterious or embarrassing linkages which have not been or cannot be explained". The plaintiffs merely asserted that they brought

the action in a representative capacity for themselves and for Umuabua family and that it was Abua that begat Umuabua. This was the same type of pleadings which the Supreme Court criticized in Sunday Piaro vs Chief Wopnu Tenalo (1976) 12 SC 31; (1976) Vol. 10 NSCC 700. In that case the plaintiffs averred in paragraphs 4 and 7 of the

B Statement of Claim that-

“(4). *The land in dispute is the communal property of the Bomu people including the defendant having acquired it by inheritance from their ancestors who had owned it from time immemorial*
 C *(7). Sometimes in 1970, the defendant by himself, his servants and agents without the leave and licence of the plaintiffs broke and entered the plaintiffs’ said land and destroyed economic trees, cultivated some crops, laid waste great portions of the said land, and alienated portions of the said land”.*

D On these pleadings and the evidence led the learned trial judge found and held that:

“*Plaintiff’ root of title is certainly in inheritance from their ancestors. I am satisfied that Kporo bush is Bomu communal land and that Tenalo, 1st Plaintiff’s father and Paramount Chief in his time*
 E *did control the use of Kporo bush. Whether or not some of the people disliked 1st plaintiff and would prefer to be led by defendant, there is no evidence that the communal nature of Kporo bush has changed”.*

On appeal to this Court, Obaseki Ag. JSC (as he then was)
 F found at page 705 -

“*We find however in the pleadings and the evidence a total absence of facts about*

(1) The founding of Bomu village in general and Kporo, the land in dispute, in particular;

G *(2) The persons who founded the land and exercised origin acts of ownership and*

(3) The persons who have held title or on whom title has devolved in respect of the land since the founding before the 1st plaintiff/respondent acquired control of the land on behalf of the
 H *community.”*

He then went on to say -

“*All these facts which are necessary for the proper determination of the issue raised are not provided by the sweeping assertion that “the land is communal land of Bomu people”. This leaves the*

traditional evidence in the air and it is fatal to plaintiff claim (See F. M. Alade vs Lawrence Awo (1975) 4 SC 215 at 229). The demeanour of witnesses giving traditional evidence is no test of the truth or falsity of the evidence”

The urgency and necessity of pleading a line of descent or giving the names of the Diokpas who have managed the land from Abua to the present plaintiffs became more imperative on them when the defendants denied the descent of the land in dispute from Ezuga to Abua and going further to trace their own lineage from Abua to the present defendants affirming that it was Ademe (their ancestor) a grandson of Abua who founded the land in dispute (See paragraph 9 of the Further Amended Statement of Defence already reproduced in the judgment). The defendants effectively shut the plaintiffs out from claiming to have a share in the disputed land even though the plaintiffs and defendants came from the same ancestry of Abua. As the defendants’ line of descent from Ademe to themselves challenged the traditional history of the plaintiffs that the land was inherited by the plaintiffs from Abua, the plaintiffs were duty bound to plead their line of descent from Abua to themselves in order to show:

(a) The persons who have held title or on whom title devolved in respect of the land since the founding to the present day.

(b) That the line of descent by inheritance as pleaded and testified to by the defendants is wrong.

The consequence of not establishing a line of descent from Abua to the present plaintiffs is that they have failed to establish their link as a community with Abua and the land in dispute. There is no burden of proof placed on the defendants since they did not counter claim for declaration of title. The burden of proof remained with the plaintiffs who were bound to fail if no evidence was adduced on either side.

Even if the lower court had evaluated the evidence, it would still have dismissed the plaintiffs’ case because of the missing link in the pleadings and evidence between Abua and the plaintiffs. Issues 1, 3, 4 and 5 are therefore resolved against the appellants in favour of the respondents.

The appellants have alleged lack of fair hearing in the failure by the court below to consider acts of ownership and possession pleaded by them before their case was dismissed for insufficiency of

pleadings of their traditional history. This claim was countered in the respondents' brief to the effect that the acts of possession pleaded by the plaintiffs/appellants in paragraphs 9, 15, 16, 17, 18, 19 and 20 of the Amended Statement of claim were not pleaded as root of title but as acts performed by virtue of first ownership and occupation.

B *One of the five ways of proving title to land as enunciated in Idundun vs Okumagba (1976) 9 - 10 SC 227 is by various acts or possession and ownership, numerous and positive extending over a length of time as to warrant an inference of ownership. Where a party pleads traditional title and*
C *also acts of possession and ownership, the party can rely on the latter to prove his case where the evidence of traditional history is inconclusive.* See: Ekpo vs Ita (1932) II NLR 68; Balogun vs Akanji (1988) 1 NWLR (Part 70) 301.

D The plaintiffs pleaded in paragraphs 9, 15, 16, 18, 19 and 20 of the Amended Statement of Claim various acts of enjoyment of the land like farming and reaping of economic trees, exercising control such as letting and granting permission to others including family members to use the land e.g. the permission given to St. Andrew's
E Church to use part of the land as school farm, permission granted to Gabriel Iredu after protest to build on the land and permission granted to Mike Iwenofu to make an access road to his house. The defendants specifically denied the plaintiffs' claims in paragraphs 11 and 12 of the Further Amended Statement of Defence. The Defendants/
F Respondents tendered Exhibits K & K1 where David Iredu was charged to Court in Charge No.MID/6C/83 for stealing beacons on the disputed land. The court found that he was exercising a bona fide right to protect his family property and he was discharged and acquitted.

G The defendants also successfully defended an action in the Customary Court of Obosi over the disputed land in Suit No.CCOS1/21/83 between Christopher Ofobuike & 2 Ors vs David Iredu & 2 Ors. Exhibit 'D' which was the affidavit in support of the application for injunction in Suit No.0/104/95, Gabriel Iredu deposed to facts which
H the plaintiffs/appellants were unable to refute in their counter - affidavit which was put in evidence as Exhibit 'C'. Consequently after Edwin Ofili Ekwuno, PW1 (the star witness) had testified and was being cross - examined, he admitted that when they deposed to Exhibit 'C' on who gave Mike Iwenofu permission to construct the road,

they (plaintiffs) did not state that they gave the permission. He also agreed that he never stated in his affidavit that anybody from the plaintiffs' side accompanied Richard Iredu when he negotiated with St. Andrew's Church about the land that was given to the church for the school farm. He said that the information he received from his fathers, Richard Iredu was the Diokpala of Umuabua when he negotiated with St. Andrew's Church over the land. As to who gave permission to Mike Ajegbo to construct the drains and gutters when he tarred the road leading from Akuora Market he admitted he did not state in his counter - affidavit that it was the plaintiffs who gave the permission to Mike Ajegbo to tar the road. In all these instances the defendants had averred positively that they gave the permission.

The evidence adduced by PW1 was demolished under cross - examination and nothing was left to evaluate which would have tilted the case in favour of the plaintiffs.

Therefore no miscarriage of justice was occasioned to the plaintiffs in the two lower courts not evaluating the evidence nor was there lack of fair hearing by the lower court when it dismissed the plaintiffs' case based on insufficiency of pleadings. For any evidence to be cogent, it must be based on pleaded facts. Issue No. 2 is equally resolved against the appellants in favour of the respondents.

This appeal completely lacks merit and it is hereby dismissed. The order made by the Court of Appeal, Enugu on 31/5/2005 in appeal No.CA/E/18/2000 allowing the appeal and setting aside the non - suit and dismissing the claim is further affirmed by this Court with costs assessed at N100,000.00 (One Hundred Thousand Naira) in favour of the respondents against the appellants. The appeal is accordingly dismissed.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead Judgment of my learned brother, AKA'AH'S JSC just delivered.

I agree with his reasoning and conclusion that the appeal has no merit and should be dismissed.

It is settled law that in matters tried on pleadings, facts relevant for the establishment of the cause of action or right to relief(s)

must first be pleaded before evidence in proof of same can be allowed during trial as evidence on facts not pleaded grounds to no issue.

Also settled law is the principle that a plaintiff must succeed on the strength of his case and not on the weakness of the defence, though in an appropriate case, a plaintiff can rely on the weakness of the defence to establish his claim. Where that exception operates it must be seen clearly that the case of the defence, which constitutes its weakness, supports the facts pleaded by the plaintiff otherwise it is worthless, as same would have no evidential value.

In the instant case, appellants did not plead the intervening successors from their alleged founder down to the appellants neither did they lead evidence on the said intervening successors. Looking, therefore at the pleadings of appellants their claim was still-born. The issue of lack of pleading or insufficiency of pleadings and leading of evidence do not involve evaluation of evidence neither would such evaluation involve a consideration of the credibility of witnesses by the appellate court which is the province of the trial court.

Where a plaintiff relies on traditional evidence in proof of his title to land, he must plead and lead evidence to prove the following facts: (a) The founder of the land, (b) How he founded the said land and (c) the particulars of the intervening owners through whom he claims down to the plaintiff - See *NKADO V. EBIANO* (1997) 5 NWLR (Pt.503) 31 at 68; *Eze v. Atasie* (2000) 10 NWLR (pt. 676) 470 at 485 - 486. *Piaro Vs Tenalo* (1976) 12 S.C. 31 at 40 and 42.

The pleading in this case, particularly as it relates to their root of title, leaves much to be desired. With the fundamental defect in the pleadings which leaves much lacuna in the facts grounding their claim, their action is bound to fail with or without evidence and was rightly so pronounced by the lower court.

I accordingly dismiss the appeal and abide by the consequential orders made in the lead Judgment of my learned brother, Aka'ahs JSC including the order as to costs. Appeal dismissed.

H

MUNTAKA-COOMASSIE JSC

I was opportune to have read in draft the leading judgment of my learned brother Aka'ahs JSC just delivered.

My learned brother left no stone unturned. The reasons and reasoning leading to the dismissal of this appeal by his lordship are correct and straight forward. I have nothing to add rather than to accept them as mine.

In actual fact there are some deficiencies in pleadings. The issue of evaluation by the two lower courts does not arise at all. Consistently with the above one cannot pin point where the alleged lack of fair hearing occurred in both two lower courts. That being the case issues 1 and 2 must be resolved against the Appellants. I too, like my lord Aka'ahs JSC, dismiss this appeal which is devoid of any merit.

KEKERE-EKUN JSC

I have had the privilege of reading in draft the judgment of my learned brother, AKA'AHs, JSC, just delivered. I agree with the reasoning and conclusion that the appeal lacks merit and should be dismissed.

This is an appeal against the judgment of the Court of Appeal, Enugu Division delivered on 31/5/05 wherein the court allowed the defendant/respondents' appeal against the judgment of the High Court of Anambra State sitting at Onitsha delivered on 17/12/1998. The Court of Appeal set aside the order of non-suit made by the trial court and dismissed the plaintiffs'/appellants' suit on the ground of insufficiency of pleading.

The appellants herein, who are natives of Obosi instituted a suit in a representative capacity against the respondents at the trial court, also in a representative capacity for declaration of title, recovery of possession and injunction in respect of a piece or parcel of land known and called "Umuru" land situate in Obosi on the ground that the land is the family property of the Umuabua family of Obosi, which includes the respondents who belong to the Umu-Ademe kindred within the Umuabua family. In their amended statement of claim the appellants pleaded that the land in dispute is commonly owned by the descendants of Abua, one of the four sons of the original founder, Ezuga (also known as Dezuga). That after Ezuga's death the land was shared amongst his sons and the portion now in dispute went to Abua. In their pleadings they averred that they are descendants of Abua but did not plead particulars of intervening owners from Abua

to themselves. The respondents on the other hand admit that they are descendants of Abua but deny the appellants' assertion that their ancestor Ezuga or Dezuga founded the land. They pleaded that Dezuga had four children (i) Oli-Obi, (ii) Nyi (Odogwu Ezuga), (iii) Abua and (iv) Chiakwelu. That Abua had two children, namely, B Nwokebuani and Oradusi. That Oradusi had four children, (i) Emokamobi, (ii) Okolonkwo, (iii) Umunna and (iv) Ademe. They contend that Ademe, the grandson of Abua was the founder of the land, and that they are his descendants. They traced their interven- C ing ancestors from Ademe down to themselves and pleaded that the land had devolved on the descendants through the years as family property without being partitioned.

Both parties called witnesses and tendered documents at the trial court. At the conclusion of the trial, the learned trial Judge non- D suited the plaintiffs and declined to make any finding of fact on the evidence adduced by the parties. Both parties were dissatisfied and appealed to the lower court. The appellants challenged the decision on the ground that the parties were not heard in respect of the order of non-suit, which was raised and determined by the court suo motu E and that the plaintiffs' claims ought to have been dismissed for failure to plead and lead evidence on the line of succession from the founder to themselves. Their appeal was heard as the main appeal. The respondents also appealed against the decision to non-suit them. This appeal constituted the cross appeal before the court below. In a con- F sidered judgment delivered on 31/5/2005, the lower court held thus:

"It is quite clear that the respondents' claim was bound to fail because of the inadequacy in then pleadings. Accordingly, I allow the appeal and set aside the non-suit order of the trial court. In its place, G I dismiss the respondents' claim in the court below. As regards the cross-appeal, I see no merit in it whatsoever and I hereby dismiss it."

The appellants are dissatisfied with the decision and have appealed to this court. They formulated five issues for determination, which are fully set out in the lead judgment.

H In my view, the most crucial issue is the first issue i.e. whether the learned Justice of the Court of Appeal were right in dismissing the appellants' case for insufficiency or inadequacy of pleadings in support of their traditional history,

Litigation is fought on pleadings. They are the pillars upon

which a party's case is founded. Not only do they give the other side notice of the case they are to meet at the trial, they also define the parameters of the case. In other words, parties are bound by their pleadings. Any evidence led on facts not pleaded goes to no issue while any pleadings in respect of which no evidence is led are deemed abandoned. In effect, where the pleadings are deficient no matter how cogent the evidence led, the case would fail. See: *Nwokerobia Vs Nwogu* (2009) 10 NWLR (1150) 553; *Shell B. P. Vs. Abedi* (1974) 1 SC 23; *Ebosie Vs. Phil-Ebosie* (1976) 7 SC 119; *George Vs Dominion Flour Mill Ltd.* (1963) 1 ALL NLR 71.

The law is well settled that where a claim for declaration of title is founded on traditional history, the claimant must plead and prove the following: a. Who founded the land; b. How the land was founded; and c. Particulars of intervening owners. See: *Alli Vs Aleshinloye* (2004) 4 SCNJ 264; *Mogaji v. Cadbury Nig. Ltd.* (supra); *Elegushi Vs Oseni* (2005) 14 NWLR (945) 348; *Ohiaeri Vs Akabueze* (1992) 2 NWLR (221) 1; *Alikor Vs Ogwo* (2010) 15 NWLR (1187) 281 at 309 D - F.

It is also settled that in a claim for declaration of title the onus is on the claimant to establish his claim on a preponderance of evidence and not on the weakness of the defence, except where the defendant's case supports his case. See: *Onwugbufo Vs Okoye* (1996) 1 NWLR (424) 252; *Shittu Vs Fashawe* (2005) 14 NWLR (946) 671; *Eze Vs Atasie* (2000) 9 WRN 73 at 88; *Adesanya Vs Aderonmu* (2000) 13 WRN 104 at 115 lines 10 - 35. Furthermore, there is no burden on a defendant who has not counter claimed to establish his title. See: *Adekanbi Vs Jangbon* (2007) ALL FWLR (383) 152 @ 160 G: 163 E & 165 D - F. In the instant case, the respondents stoutly resisted the appellants' claims in their amended statement of defence but did not file a counter claim. The burden of proof thus lay squarely on the appellants to prove their case.

Issues were joined between the parties on their pleadings as to whether the land in dispute was communal land, which devolved on all the descendants of Abua, including the respondents, or whether it belonged exclusively to the respondents' Umu-Ademe kindred unit of the family. The only way the appellants could establish their claim before the trial court was by pleading and leading evidence to show not only who founded the land and how it was founded but also the

particulars of the intervening owners. It is the appellants' contention that since their case, as shown by their pleadings, is that the land is communally owned by all the descendants of Abua, which includes the respondents, there was no requirement to plead and prove the particulars of intervening owners. I find myself unable to agree with this postulation. Although the parties agree that they are all descendants of Abua, there is a dispute as to how the land devolved on the present members of the family. While the appellants say that their ancestor, Abua founded the land, the respondents assert that it was Ademe, the grandson of Abua who founded the land. In order to make any headway in proving their case, the appellants would need to plead and lead evidence of the particulars of intervening owners from Abua till the present day to show how the land has been administered by the family communally.

In their amended statement of claim dated 15/1/98, which was filed after the respondents had joined issue with them vide their amended statement of defence dated 21/7/97, the appellants pleaded in paragraphs 14 and 15 as follows:

"14. The plaintiffs are descendants of Abua (son of Ezuga) and, like the descendants of the other children of Abua supra, inherited the land in dispute which went to Abua as his own part of the estate of his father.

15. Like their fathers before them, the plaintiffs farm the land in dispute without let or hindrance. The plaintiffs also plant, tend and reap economic and other trees on the land, portion of which they also let out to occasional and seasonal farmers on terms."

Despite the copious pleading by the respondents of their lineage from Abua through Ademe down to themselves, the appellants' pleading in respect of their line of succession stopped at Abua. There is no pleading to show how the land devolved on them, even as communal owners. Who were the children of Abua? Who are the successive heads of the family who have administered the land from the death of Abua up till the time the suit was instituted at the trial court? The appellants' pleadings were sadly bereft of these particulars. In *Piaro Vs Tenalo* (1976) 12 SC (Reprint) 19 @ 27, a case in which the plaintiffs/respondents had also claimed to be entitled to a declaration of title on the basis that the land in dispute was communal land, this court held thus:

"We find however in the pleadings and the evidence a total absence of facts about (1) the founding of Bomu village in general and Kporo, the land in dispute, in particular; (2) the person who founded the land and exercised original act of ownership and (3) the persons who have held title or on whom title has devolved in respect of the land since the founding before the 1st plaintiff/respondent acquired control of the land on behalf of the community." B

All these facts which are necessary for the proper determination of the issue raised are not provided by the sweeping assertion that "the land is communal land of Bomu people". This leaves the traditional evidence in the air and is fatal to the plaintiffs' claim." C

In Ewo Vs Ani (2004) 3 NWLR (Pt.861) 610 @ 628 F - G this court, referring to the three factors that must be pleaded and proved when relying on evidence of traditional history, held:

"Obviously, if the plaintiffs did not plead traditional evidence D as indicated above, it would be futile considering any evidence in that line as such evidence would go to no issue and ought to be disregarded."

The decisions of this court in: Oke Bola Vs Molake (1975) 12 SC 61; Emegokwue Vs Okadiobo (1973) 4 SC. 113; also reported in (1973) 4 SC (Reprint) 78 @ 81 - 82 were relied upon and applied. In the instant case, the appellants having failed to plead the particulars of the intervening owners of the land, could not have led evidence in respect thereof at the trial. Even if such evidence had been led it would go to no issue. The appellants' pleadings were therefore fundamentally defective. The defect was fatal to their case. The lower court was therefore correct when it held that their claim was bound to fail because of the inadequacy of their pleadings. F

For these and the fuller reasons comprehensively set out in the lead judgment of my learned brother, Aka'ahs, JSC, I also find this appeal to be devoid of merit. I accordingly dismiss it. I abide by the consequential orders made therein, including the order as to costs. G

H

OKORO JSC

I have been privileged before today of reading in draft the judgment just delivered by my learned brother, Kumai Bayang Aka'ahs, JSC with which I am in total agreement that this appeal

lacks merit and ought to be dismissed. Although my learned brother has quite admirably resolved all the salient issues submitted for the determination of this appeal, I propose to make a few comments in support of the judgment only.

By their amended statement of claim dated the 15th day of January, 1998, the Appellants as Plaintiffs, who sued in a representative capacity for themselves and on behalf of members of Umuabua family of Obosi (excluding the Defendants/ Respondents) claimed against the Respondents (as Defendants) as representatives of Umuademe kindred of Obosi as follows:-

“1. A declaration that the piece and parcel of land known as and called “Umuru” land situate in Obosi (within jurisdiction) is, subject to the Land Use Act 1978, the communal/family property of the entire Umuabia family of Obosi.

2. Recovery of possession of the aforesaid piece or parcel of land from the defendants.

3. Perpetual injunction restraining the defendants, themselves, their servants, agents, or privies from excluding the plaintiffs from the possession and enjoyment of the said piece or parcel of land and/or from, in any manner dealing with the said piece or parcel of land in any way inconsistent with the plaintiffs communal interest therein.”

The Defendants in response filed their further amended statement of defence and the case went to trial.

The land, the subject matter of this action, is situate at Obosi in Idemili Local Government Area of Anambra State. It is the case of the plaintiffs/appellants that the said land originally belonged to Umuru village in Obosi who vacated the land after one of them committed an abominable act of killing Eze Obosi and his pregnant daughter. The people of Ire village also in Obosi including one Ezuga otherwise called Dezuga entered and shared among themselves the land vacated by Umuru people. The portion now in dispute relates to Dezuga’s share of Umuru land which was inherited by Abua.

After the sharing, Ezuga took and had exclusive possession and enjoyment of his said share of Umuru land by farming the same, letting portions thereof to occasional and seasonal farmers, and planting and reaping economic trees thereon without any let, disturbance or hindrance by any one. On his death Ezugas said share descended to his children, namely Chiakwelu, Abua, Odugwu and Oliobi who

shared the land among themselves. The portion now in dispute forms part of Abuas' share of Umuru land of his father which descended to both the plaintiffs and descendants as members of Umuabua family.

The defendants in their pleadings, while admitting that the land in dispute is situate in Obosi and that both the respondents and appellants hail from Ire village in Obosi and are descendants of Dezuga and Abua respectively denied that the land is called Umuru, or that the land belonged to either Dezuga or Abua their common ancestors. Rather according to them, the land descended to them from one Ademe their ancestor, who incidentally was the grandson of Abua and according to them was first to deforest the land when it was a virgin land and established exclusive possession over the land.

At the conclusion of evidence and address, the learned trial judge without giving the parties an opportunity to address him in that behalf non-suited the plaintiffs in the following words -

"I found it difficult to understand and appreciate the two main grounds relied upon by the plaintiffs and also by the defendants in this suit for their claim to the land in dispute as shown in Exh. A thereon verged pink or as shown on Exh. B thereon verged red. I have deliberately refrained myself from making any specific findings of fact on the evidence proffered and adduced by each party. In the circumstance, I enter a non-suit in this case for the plaintiffs. I also make no orders as to costs."

Both parties appealed to the Court of Appeal against the above judgment - the defendants/respondents as appellants therein and the plaintiffs/appellants as cross appellants therein. In its judgment the Court of Appeal dismissed the appeal of the cross appellants and allowed the appeal of the appellants in the following words-

"From all that I have been saying in this judgment it is quite clear that the respondents claim was bound to fail because of the inadequacy in their pleadings. Accordingly I allow the appeal and set aside the non-suit order of the trial court. As regards the cross appeal, I see no merit in it whatsoever."

This appeal is against this judgment and is based on the notice and grounds of appeal at pages 455-462 of the records.

The main plank of the lower court's decision is that there was insufficient pleading to anchor the case of the appellants. That is why the learned counsel for the Appellants has distilled in issue one

“whether the learned justices of the Court of Appeal were right in dismissing the Appellants’ case for insufficiency or inadequacy of pleadings in support of their traditional history.” It is trite that a party seeking for a declaration of title to land, who relies on traditional history as proof of his root of title, must plead same sufficiently. That is to say; he must demonstrate in his pleading the original founder of the land, how he founded the land, the particulars of the intervening owners through whom he claims. Where a party has not given sufficient information in his pleadings as regards the origin or ownership of the land and the line of succession to himself, he has just laid foundation for the failure of his claim. See *HYACINTH ANYANWU V. ROBERT ACHILIKE MBARA & ANOR* (1992) 5 SCNJ. 90, *IDUNDUN V. OKUMAGBA* (1976) 9 - 10 SC 224, *ATANDA V. AJANI* (1989) 3 NWLR (Pt. III) 511.

The Appellants pleaded ownership of the land in dispute by inheritance in the following manner:

“The Plaintiffs are descendants of Abua (son of Ezuga) and like the descendants of the other children of Abua supra, inherited the land in dispute which went to Abua as his own part of the estate of his father.” See paragraph 14 of amended statement of claim.

At the hearing, the Appellants as Plaintiffs gave evidence that the land devolved on them from Abua by inheritance. The pleading alluded to above also shows that there are other children of Abua who were not disclosed. Clearly, the line of succession in respect of this land stopped at Abua. It is seen that the Appellants failed to plead and give evidence of persons who have held title or on whom title devolved in respect of the land in dispute since its founding and up to when the Appellants inherited it. I can now see why the court below dismissed this appeal on the ground that the Appellants’ pleading on issue of traditional history was insufficient. There was a break at Abua and that break has not been explained.

Based on the above reasons and the more detailed ones contained in the lead judgment, I also find no merit in this appeal. Accordingly, I dismiss this appeal. I abide by the consequential orders in the lead judgment, that relating to costs, inclusive.