

**SUPREME COURT OF NIGERIA**  
FRIDAY 6TH JUNE, 2014. SC. 102/1990  
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-  
COOMASSIE, N. S. NGWUTA, O. ARIWOOLA,  
C. B. OGUNBIYI, JJSC**

1. GODWIN C. ONOVO

2. SAMUEL O. ANI

3. GODWIN ANI

..... APPELLANTS

4. JONATHAN N. NWEKE

(For themselves and on behalf of the  
family of Umunwesete of Obeagu  
Ugbawku Nkanu Local Government Area)

**AND**

1. FERDINAND MBA

2. CHIEF JONATHAN MBA-EDE

3. PETER O. ANI

..... RESPONDENTS

4. SUNDAY UGBOAJA

(For themselves and on behalf of  
Umuigbudu family of Obeagu Ugbawka  
in Nkanu Local Government Area)

---

ACTIONS - Proof - Standard of - A party who desires to have judgment in his favour - Must establish his case on preponderance of evidence - By leading credible and admissible evidence (H1)

LAND LAW - Title - Proof - Onus lies on plaintiffs to establish their claim on the strength of their own case - And not rely on the weakness of defendants (H2)

EVIDENCE - Hearsay evidence - Admissibility - Evidence of PW4 is hearsay - Which is of no probative value - And not admissible in law (H3)

LAND LAW - Identity of land - CA rightly endorsed trial Judge's finding - That the land in dispute in the 1957 case is not the same as the present one - But it covers substantial part of that which was in dispute in 1957 case (H4)

LAND LAW - Title - When in issue - With appellants' claim originating in trespass and injunction - Title of the subject matter is automatically put in issue (H5)

RES JUDICATA - Land law - Title - Proof - Appellants must inter alia prove - That respondents have no share of Akpa land - That the disputed land and parties in both suit are same (H6)

LAND LAW - Title - Proof - Means - Idundun v. Okumagba - Title can be established by traditional evidence - Acts of ownership - Production of document of title - Long possession - And possession of adjacent land (H7)

LAND LAW - Title - Proof - Possession - A person in possession is presumed the owner - But an adverse claimant must show that the party in possession - Occupies without consent - Or is a tenant (H8)

EVIDENCE - Admissibility - Lower courts rightly accepted the evidence confirming - That respondents are presently exercising act of ownership - Over the land in dispute (H9)

EVIDENCE - Material contradictions - Effect - The various contradictions in appellants' case - And their admission in favour of respondents - Constitute an admission against appellants' interest (H10)

EVIDENCE - Evaluation - Interference - Where trial court unquestionably evaluates evidence and appraises facts - Court of Appeal should not substitute its own views for that of trial court (H11)

APPEALS - Courts - Findings - Correctness of - Trial court's findings with respect to the disputed land and the one in 1957 suit - Was based on pleadings and evidence before it (H12)

LAND LAW - Title - Traditional history - Weight - Where plaintiff and defendant prove ownership by traditional history - Court is to appraise their evidence - And determine which side is weightier (H13)

LAND LAW - Trespass - Possession - Proof - Plaintiffs in a claim for trespass - Must prove exclusive possession of the land in dispute - Otherwise their claim fails (H14)

LAND LAW - Title - Possession - CA rightly stated that judgment in the 1957 suit did not confer title on appellants - Hence the suit cannot sustain plea of res judicata - Or be relied upon as evidence of acts of possession (H15)

### **FACTS**

Plaintiffs/appellants instituted this action against defendants/respondents at the High Court of Enugu State. Appellants' claim is for a declaration of title to the land in dispute, general damages for trespass and perpetual injunction restraining respondents from entering the land without prior consent of appellants. The two parties in the matter agree that they share a common ancestor - Ogbu Nwazeogu. The said ancestor had two sons namely Anyi Ogbu and Nevo Ogbu. Appellants are the descendants of the former, while respondents are that of the latter. Both sides however disagree on who is the elder of the two sons.

Appellants' contention is that the land belongs to them from time immemorial and that they had also exercised acts of ownership over same. On the other hand, respondents' case is that appellants and respondents have a portion each on the land. Both parties relied on traditional history and acts of ownership and possession to prove their entitlement to the land. In addition, appellants relied on a 1957 suit No. E/10/57 in proof of their ownership to the land. After having heard from the parties, the learned trial Judge dismissed appellants' claims. Dissatisfied, appellants appealed to the Court of Appeal Enugu Division. Judgment was entered for respondents and appellants' appeal dismissed. Aggrieved further, appellants appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

1). Whether in view of the evidence and unchallenged finding of the courts below that the land now in dispute is the same as that in dispute in the 1957 case, the lower court was right in holding that the respondents exercised act of ownership over the land now in dispute.

2). Whether on the state on the pleadings and evidence the Court of Appeal was right in holding that the appellants failed to produce satisfactory evidence if traditional history.

3). Whether the court below was right in dismissing the appellants' case in its entirety when it is shown in the pleadings and evidence and is admitted by the respondents that the appellants are in effective occupation and possession of undefined portions of the land in dispute.

4). Whether the Court of Appeal averted its mind to acts of possession by the appellants and the legal effects thereof.

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

*D ACTIONS - Proof - Standard of*

**1. The principle of law is well entrenched in our judicial system that he who asserts must prove and whoever desires to have judgment in his favour must establish his case on a preponderance of evidence. Such a party therefore must lead credible and legally admissible evidence in order to succeed. See Sections 131 - 133 of the Evidence Act 2011. (p. 2778 A)**

*LAND LAW - Title - Proof*

**2. The law is also settled that in a claim for declaration of title to land, the onus lies on the plaintiffs/appellants to establish their claim on the strength of their own case and not rely on the weakness of the defendants/respondents. Therefore, the plaintiffs must satisfy the court that based on their pleadings and evidence they are entitled to the declaration sought. (p. 2778 B)**

*EVIDENCE - Hearsay evidence - Admissibility*

**3. Intriguing, the witness PW.4 at page 48 of the record prevaricated when he said:-**

**"According to the history I was told all the communities viz Umuigbudu (defendants), Umunwazete (plaintiffs) Umuogbu Nevo, Amanakwachi and Amankwo all have portions of land**

***both at Akpa and Apiti lands except the Umuigbudu (defendants) who have land only at Apiti and not Akpa.”***

***Without much ado, the witness’s evidence at page 48 supra, is hearsay evidence since he was narrating that which he was told from history. That aspect of evidence is of no probative value with the trite nature of law that hearsay evidence is not admissible. The nature of the witnesses’ evidence however affirms that he is a controversial witness. (p. 2781 A)***

*LAND LAW - Identity of land*

***4. It is well established from the foregoing that the land in dispute in the case at hand covers a substantial part of the land litigated in the 1957 suit. The use of this phrase was not disputed by the appellants themselves. It is however the interpretation given therefore by the appellants that is the problem. There is no way what the use of a phrase “substantial part of” could be synonymous to the use of the phrase “same area”. In other words, the lower court could not be faulted when it endorsed the learned trial judge’s finding at page 107 supra, that the land in dispute in the 1957 case is not the same as the one presently in dispute but it covers a substantial part of that which was in dispute in 1957 case. (p. 2783 C)***

*LAND LAW - Title - When in issue*

***5. The appellants on their submission vehemently argued the absence of acts of ownership and possession on the part of the respondents. It is pertinent to state at this juncture that with the appellants’ claim originating in trespass and injunction, the title of the subject matter is automatically put in issue. (p. 2783 F)***

*Land law - Title - Proof*

***6. Therefore, from the nature of the appellants’ case, the law requires them to prove the following as rightly submitted by the respondents’ learned counsel:-***

- 1) That the respondents have no share of Akpa land.***
- 2) That the land in dispute is the same as the one in dispute in 1957.***

3) That the defendants in the present suit are the same as the defendants in the 1957 case.

4) That there was a final judgment against the present defendants in the 1957 case.

B 5) That the respondents occupy the land in dispute as customary tenants of the appellants.

6) That they (appellants) exercise acts of ownership and possession extending over a long period of time, and positive and numerous enough to warrant the inference that they were the exclusive owners. (p. 2783 H)

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

D 7. To succeed on a claim for title to land therefore, at least one of the following five methods must be proved as laid down in the case of *Idundun v. Okumagba* (1976) 9-10 C 227.

a) Proof by traditional evidence;

E b) Proof of acts of ownership; acts by persons claiming the land such as selling, leasing, renting out all or part of the land, or farming on it or otherwise utilizing the land beneficially; such acts of ownership must extend over a sufficient length of time and numerous and positive enough to warrant the inference that the claimant is the true owner;

F c) Proof by production of documents of title which must be authenticated;

d) Proof of ownership by acts of long possession and enjoyment in respect of the land to which the acts are done;

G e) Proof of possession of connected or adjacent lands in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute. (p. 2784 D)

LAND LAW - Title - Proof - Possession

H 8. The presumption of law is also well founded that a person in possession of land is presumed to be the owner thereof. Therefore in order to displace such a person, a claimant (appellants in this case) have to show that the party in possession (i.e. respondents) are in possession either without their consent or are their tenants. (p. 2785 A)

*EVIDENCE - Evaluation - Admissibility*

**9. The foregoing findings are very well calculated and I cannot but agree with the endorsement made by the lower court that the articulation by the trial court in that behalf was sound and well thought out. The proof of the issue at hand was a matter of evidence and the trial court was in the best position to determine on whose side the pendulum of justice would tilt having seen, heard and assessed the credibility of the witnesses on both sides. The lower court in its review of the evidence on record did a job very well done. Again and as rightly observed by the lower court, the learned trial court judge did clearly comprehend the entire case and rightly came to a conclusion which was abundantly by evidence.**

**I further wish to add that the lower court was on the right path as did the trial court in accepting the evidence by the defendants/respondents which was amply supported by the evidence from the plaintiffs, witnesses especially that relating to the confirmation that the defendants/respondents are presently exercising act of ownership over the land presently in dispute. (p. 2787 B)**

*EVIDENCE - Material contradictions - Effect*

**10. In the legal parlance, the various material contradictions in the appellants' case and also their admission in favour of the respondents constitute an admission against the appellants' interest. (p. 2787 F)**

*EVIDENCE - Evaluation - Interference*

**11. In the circumstance, the lower court rightly captured the well established principle that where a court of trial unquestionably evaluates the evidence and appraises the facts, it is not the business of a Court of Appeal to substitute its own views for the views of the trial court. (p. 2788 B)**

*Courts - Findings - Correctness of*

**12. On the oral evidence before the trial court, it is evident that some of the plaintiffs' witnesses did not seem to know**

what they were testifying to. Therefore, the lower court was obviously in order when it endorsed the findings of fact by the learned trial judge to the effect that “the land in present dispute covers a substantial portion of the land in dispute in 1957 suit;” also that the defendants exercise acts of ownership over the land in the present dispute.

Contrary to the allegation put forth by the appellants’ counsel, the learned trial judge, as rightly concluded by the lower court judge did not make out any case for the defendants. Rather, his findings were based on the evidence before him.

Issue 1 is, in the circumstance resolved against the appellants, who had misunderstood the totality of the proceedings before the trial court and its judgment in particular the use of the phrase “the land in dispute in this case covers a substantial part of the land litigated in 1957 suit.” The findings was endorsed by the lower court to the effect that the land now in dispute is not one and the same as that in dispute in the 1957 case. In other words the foregoing findings was well established on the pleadings and the evidence before the trial court and this was approved by the lower court which is now further affirmed by this court that the respondents exercise act of ownership over the land now in dispute. (p. 2788 F)

*LAND LAW - Title - Traditional history - Weight*  
 13. The law is well settled that where the plaintiff and the defendant in a suit for title to land both seek to prove ownership by traditional history evidence, the duty of the trial court is to weigh their evidence on an imaginary scale and determine which of the two sides is weightier. (p. 2792 B)

*Trespass - Possession - Proof*  
 14. As rightly submitted by the learned respondents’ counsel, the law is well grounded that in a claim for trespass, the plaintiffs must prove exclusive possession of the land in dispute otherwise their claim fails.  
 It is also apparent that in the case at hand, all the reliefs claimed by the plaintiffs were predicated on ownership or ex-



***clusive possession of the Akpa land in dispute. It will follow therefore that the absence of proving ownership or exclusive possession of the said land will automatically also affect the other reliefs which must necessarily fail.*** (p.2797 A)

*LANDLAW - Title - Possession*

***15. Again and contrary to the submission by the appellants' counsel, the contention that the appellants have been in possession of the said land in full and undisturbed exercise of their right of ownership is grossly unfounded and a complete misconception of the entire case at hand. This is more so when regard is had to the earlier conclusion arrived at that the land subject of contention in the 1957 case is distinct and completely different from the land now in dispute and before this court. The 1957 case, in other words, has no bearing or any added value or significance to the appellants' case. As rightly pointed out by the lower court, the judgment in that suit did not confer any title on the appellants; this is especially where there is no such evidence on record. It could therefore only be imagined but cannot sustain either a plea of res judicata or be relied upon as evidence of acts of possession in the absence of such title to the land then in dispute.*** (p.2798 H)

**REPRESENTATION**

Chief Mrs. A. J. Offiah, SAN with Ikechukwu Onuoma, Esq., and Chuka Iloeje Esq, for the Appellants

Chief Ogwu Onoja, SAN with R. O. Nwosu (Mrs.), M. A. Ebute Esq., Omadu A. Daniel Esq. M. O. Akpa (Miss), Ameh J. Abah, Esq., and E. U. Dan (Miss), for the Respondents

**CASES REFERRED TO**

Federal Housing v. Summer (1986) 1 NWLR (Pt. 17) 533

Elias v. Omo-Bare (1982) All NLR 75

Odunukwe v. Ofomata (2010) 18 NWLR (pt. 1225) 404

Ekanem v. Akpan (1991) 8 NWLR (pt. 211) 616

Olubunde v. Adeyoju (2000) 10 NWLR (pt. 10) 562

Akintola v. Lasupo (1991) 3 NWLR (pt. 180) 508

Okorie v. Udom (1960) SC NLR 326

- Idundun v. Okumagba (1976) 9-10 C 227  
 Okoye v. Kpajie (1973) 1 NMLR 84  
 Jinadu v. Esurombi (2005) 14 NWLR (pt. 944) 142  
 Oyadare v. Keji (2005) 7 NWLR (pt. 925) 571  
 Ibrahim v. Shagari (1983) All NLR 507  
 B Akinloye v. Eyiola (1968) NMLR 92  
 Ajibade v. Mayowa (1978) 9 and 10 SC 1  
 Odume v. Ume Nnachi (1964) 1 All NLR 329

**STATUTE REFERRED TO**

- C Evidence Act 2011, ss. 131-133

**LEAD JUDGMENT BY OGUNBIYI JSC**

The appeal by the plaintiffs/appellants is against the judgment  
 D of the Court of Appeal delivered on 13th June, 1989. The appellants  
 were the plaintiffs before the Enugu High Court and on their state-  
 ment of claim at paragraph 23 claimed against the defendants as  
 follows:-

E “(a) A declaration of title to a customary right of occupancy of  
 the said piece or parcel of land situate at Obeagu Ugbawka and called  
 ‘Akpa land’ which land is more particularly delineated in the plan  
 attached thereto.

(b) N500 General Damages for Trespass.

F (c) A perpetual injunction restraining the defendants their ser-  
 vants or their agents from entering the land in dispute and in any  
 manner whatsoever interfering with the said land without the prior  
 consent of the plaintiffs.”

The case of the plaintiff who sued for themselves and on be-  
 G half of Umuenwezette Quarter of Obeagu, Ugbawka, was that the  
 land in dispute had belonged to them from time immemorial; that  
 they had also exercised acts of ownership over the said land all this  
 time. While eight witnesses testified on behalf of the plaintiffs/appel-  
 lants, seven witnesses also gave evidence for the defendants/respon-  
 H dents whose case briefly put was that, the Akpa land is a area of land  
 and each family or quarter in Ugbawka has its portion including the  
 plaintiffs and the defendants.

Both parties agree as a common factor between them that  
 they share a common ancestor - Ogbu Nwazeogu, who had two sons

namely Anyi Ogbu and Nevo Ogbu. While the plaintiffs/appellants are the descended of Anyi of Anyi Ogbu, the defendants/respondents are that of Nevo Ogbu; both parties however disagree as to who was the elder of the two sons of Ogbu Nwezeogo. It is also agreed by both parties that their common ancestor shared his land between his two sons. B

From the pleadings and the evidence led on the record, both parties relied on traditional history and acts of ownership and possession. The plaintiffs, in addition further relied on a 1957 suit No. E/10/57 in proof of their ownership to the land in dispute. C

The crux of the matter before the trial court was, while the plaintiffs/appellants on the one hand, claimed that their ancestor was given Akpa land of which the land in dispute forms a part, the defendants' ancestor was not given any portion of the Akpa land but was only given the apiti land. The defendants on the other hand had contended that their common ancestor Ogbu Nwezeogo gave each of his two sons a portion of Akpa land and also a portion of apiti land. D

In other words, the defendants/respondents, contrary to the contention by the plaintiffs/appellants are of the view that the parties each has a portion of share in both Akpa and apiti lands. E

On the 9th June 1983, the trial court Judge, Ubaezonu J, (as he then was) in a considered judgment dismissed the plaintiffs' claim in its entirety. F

The plaintiffs as appellants were dissatisfied with the said judgment and lodged an appeal at the lower court (Court of Appeal Enugu). The lower court in its considered decision also entered judgment in favour of the respondents against the appellants whose appeal to that court was dismissed. G

The appellants were again dissatisfied with the said judgment of the lower court and have further appealed to this court by filing five grounds of appeal.

It is instructive to state that the appeal which was initially dismissed for want of diligent prosecution by this court on April 4, 1996 was however relisted on December 16, 2017, by the grant of the appellants, application thereto dated March 3, 2010. Also, subsequent to the relisting, and pursuant to a motion dated December 18, 2012 an order was made substituting the names of the original par- H

ties which were changed accordingly.

In accordance with the rules of this court, briefs were exchanged between parties. While the appellant's brief of argument was filed on the 3rd June, 2013, that of the respondents in response filed on 9th December, 2013 was deemed properly filed on 10th March, 2014.

<sup>B</sup> The appellants, reply brief was also, on an oral application, moved on 10th March, 2014, deemed filed and served on the said same date. Counsel thereupon adopted their respective briefs of arguments and relied there on. On behalf of the appellants, their learned counsel <sup>C</sup> Chief (Mrs.) Offiah (SAN) urged that the appeal be allowed and the judgment of the two lower courts should be set aside for having misconstrued the claim by the appellants. On the side of the respondents however, the counsel Chief Onaja, SAN adumbrated his submission and urged in favour of the dismissal of the appeal as lacking <sup>D</sup> in merit. Counsel also argued the incompetence of the appellants' reply brief which in his view had derailed from addressing any point of law but a re-argument of the appeal which should be struck out. The learned counsel cited a number of decided cases to buttress his <sup>E</sup> stance of argument; counsel also informed the court of their intention to file an additional list of authorities which was duly done.

From the five grounds of appeal filed the following four issues were raised on behalf of the appellants.

<sup>F</sup> 1). Whether in view of the evidence and unchallenged finding of the courts below that the land now in dispute is the same as that in dispute in the 1957 case, the lower court was right in holding that the respondents exercised act of ownership over the land now in dispute.

<sup>G</sup> 2) Whether on the state on the pleadings and evidence the Court of Appeal was right in holding that the appellants failed to produce satisfactory evidence if traditional history.

<sup>H</sup> 3) Whether the court below was right in dismissing the appellants' case in its entirety when it is shown in the pleadings and evidence and is admitted by the respondents that the appellants are in effective occupation and possession of undefined portions of the land in dispute.

4) Whether the Court of Appeal averted its mind to acts of possession by the appellants and the legal effects thereof.

On behalf of the respondents also, the four issues raised are as

follows:-

1. Whether from the evidence before the court, the lower court was right in holding that the appellants did not discharge the burden of proof placed on them in respect of the land in dispute.

2. Whether the evidence of traditional history adduced by the appellants was satisfactory and conclusive enough to sustain their claim. B

3. Whether the appellants established any acts of ownership and possession extending over along period of time, and positive and numerous enough to warrant the inference that they were the exclusive owners. C

4. Whether the lower court averted its mind to the acts of possession alleged/pleaded by the appellants.

The four issues raised by each of the parties are substantially the same. I will therefore adopt those of the appellants for purpose of determining this appeal. D

#### ISSUE 1

With reference to the 1st issue, raised, the counsel Chief (Mrs.) A. J. Offiah, SAN who represented the appellants related copiously to the pleadings of the parties each at paragraph 13 and submitted that the respondents did join issue with the appellants on their averments that the land in dispute in suit No. E/10/57 i.e. Exhibit 'A' is quite distinct and different from the one now in contention in the present case. It is the counsel's argument that, from the traditional evidence given, both appellants and respondents each have their own Akpa land which was involved in the 1957 suit, Exhibit 'A', that the finding by the trial court, which was not challenged at the lower court, was to the effect that a substantial portion of that land is now being litigated in the present suit; that with the findings by the trial court judge at page 107, *"that the land in dispute in this case covers a substantial part of the land litigated in 1957 suit,"* he ought immediately to have rejected the evidence of the respondents that they exercise acts of ownership over the land in dispute. This, learned counsel submits in view of the consistent and emphatic denial by the respondents themselves that they are either living on or doing anything on the land disputed in 1957, i.e. Exhibit 'A'. In the result, the counsel submitted as erroneous the findings by the two lower courts that the respondents are exercising any act of ownership over the E F G H

land now in dispute; that the finding which did not flow from the entire evidence on record would amount to making out a case for the respondents different from that which they have put forward both in their pleadings and evidence before the court.

The trial court, learned counsel submits, ought to have rejected the evidence of the respondents especially when they had consistently and emphatically denied living on or doing anything on the land Exhibit 'A'; that the duty of the court is limited to trying only the issues arising from the pleadings i.e. the elements or grounds of a claim or defence or substantive point of law being proposed. See the case of *Federal Housing v. Summer* (1986) 1 NWLR (Pt. 17) 533 at 541. It is also the appellants' contention that the land now in dispute is the same as the one litigated in 1957 as per Exhibit 'A'; that since the court below found that the lands in dispute in the two cases are substantially the same, it is the counsel's submission that, without any amendment to the respondents, pleadings and in view of the evidence on record, it was therefore wrong for the courts below to find that they (respondents) exercise acts of possession on the land litigated in 1957, contrary to their pleadings and evidence.

On the totality of the foregoing submission, the learned senior counsel passionately urged the court to hold that the lower court fell into an error when it upheld the findings by the trial court that the Respondents exercise any act of ownership over the land in dispute. Rather, the counsel impressed upon this court to uphold the appellants' acts on the land in dispute as proof of their, (appellants'), ownership thereof.

The learned counsel, Chief Ogwu, Onoja SAN, represented the respondents and in his submission on the 1st issue, he opined that in the determination whether or not the appellants at the trial court discharged the burden of proof placed on them, recourse must necessarily be had to the pleadings before the court and the evidence led on same; that the appellants had failed to prove the requirements stipulated by law for the proof of claim for declaration of title to land. This is more so, counsel affirms especially where the evidence of the appellants' own witnesses had damaged their case wherein their testimonies were more in support of the respondents, case. The averments in paragraph 13 of the statement of claim and defence respectively are evident that the parties have joined issues as

to the area of land in dispute both in the 1957 case and in the present case. Also and relying on paragraphs 5 and 6(v) of the respondents, defence, learned counsel submits that the two lower courts were right in holding that the respondents exercise acts of ownership and possession over the disputed land; that this finding, counsel maintains, has nothing to do with the 1957 case and the land therein in dispute; that on a close examination of Exhibit 'D' (the plan of the land in dispute in the 1957 suit), Exhibit 'E' (the plan of the land in the dispute in the present case) and Exhibit 'F' (the resultant plan from the super imposition of Exhibit 'D' on Exhibit 'E'), it is clear from the evidence of the plaintiffs/appellants, witnesses themselves that the land in dispute in the present case and the one in the previous suit cannot be the same piece of land. It is also the submission of counsel that the acts of ownership and possession raised by the defendants/respondents in their evidence related to the Akpa land presently in dispute; that there was therefore no reason for the learned trial judge to concern himself with the land in dispute in the 1957 case in order to reject the evidence of acts of ownership and possession pleaded and proved by the defendants/respondents in the present case. The learned counsel submits strongly that whilst it is true that the respondents did clearly state that the land in dispute in the 1957 suit was different from the land in dispute in the present case, they did not however deny that they ever rived on the rand in dispute in the said 1957 suit, or in deed the land in dispute in the present surrounding. Reference made to Exhibits 'D', 'E' and 'F' are all held in evidence.

Contrary to the submission by the appellants, counsel, the court below like the learned trial judge, counsel contended, did not make out any case for the defendants/respondents. It is the counsel's position rather that the view held by the lower court was predicated on findings on the evidence furnished at the trial court; that the plaintiffs/appellants' case is like a house divided against itself; that with the evidence of P.W.5 being materially and completely at variance with those of other plaintiffs/appellants, witnesses, the appellants, case cannot stand.

It is the submission of learned counsel further that the appellants, argument under this heading is circuitous rather than direct. In other words, that the appellants are drawing inferences or deductions from what was said of the land in dispute in the 1957 case

rather than drawing direct conclusions from what is said about the land now in dispute in the present case.

On the totality, it is the submission of counsel ordinarily, that a resolution of this issue alone is enough to determine this appeal one way or the other, such that delving into other issues would amount to an academic exercise which the court is urged to so hold. Therefore and while urging that the said issue be resolved in favour of the respondents and against the appellants, it is the counsel's contention that the rejection of the appellants' entire claim is obvious on the pronouncement made in the case of *Elias v. Omo-Bare* (1982) All NLR 75 at 87 - 88 wherein this court per Udoma, JSC held as follows:-

*"If there was ever a land case completely starved of evidence this is certainly one. This case clearly cries to high heavens in vain to be fed with relevant and admissible evidence. The appellant woefully failed to realize that judges do not act like the oracle at Ife, which is often engaged in crystal gazing and thereafter would proclaim a new Oba in succession to a deceased Oba. Judges cannot perform miracles in the handling of civil claims least of all manufacture evidence for purpose of assisting a plaintiff to win his case."*

The determination of the 1st issue in my view revolves around the following two questions:-

1) Whether the courts below found as a fact that the land is dispute is the same as that in the 1957 case.

2) Whether the lower court was right in holding that the respondents exercise acts of ownership over the land now in dispute.

It is a consistent submission by the learned counsel for the appellants that the land now in dispute is one and the same as that of the 1957 case and that the lower court held the contention that the respondents denied ever living on the land in 1957 case. In other words, it is the appellants' argument that the cumulative interpretation of the foregoing two questions simply put, is that, if the court below found that the present land in question is the same as that in 1957 case, the logical deduction is that the respondents cannot now possibly exercise acts of ownership over the land now in dispute.

From the respondents' point of view, the appellants' issue 1 as framed in their brief of arguments is not correct because the respondents did not at any time hold out that they never exercised any act



on the land in the 1957 case. This therefore explains why the respondents' counsel submits that the appellants' argument under this heading, counsel maintains is circuitous rather than direct. In other words, that the appellants are drawing inferences or deductions from what was said of the land in dispute in the 1957 case rather than drawing direct conclusions from the land in dispute in the present case. B

With reference made to paragraphs 13 of the statement of claim and also Statement of defence respectively, both the plaintiffs and the defendants joined issues inter alia as to the area of land in dispute both in the 1957 case and in the present case. The reproduction of the paragraphs will be apt and are as follows:- C

Paragraph 13 of the statement of claim therefore reads as follows-

*"13. The plaintiffs sued the defendants to the then Native Court at Agwu for declaration of title in respect of the land in dispute but before this action was heard the defendants and the Umuigwenevo quarter sued in the High Court joining plaintiffs and the Umogbunevo family as defendants for declaration of title to a larger piece of land which included the land in dispute which they claimed was a communal land."* E

In response, the respondents also at their paragraph 13 of the statement of defence had the following to say:-

*"13. Paragraph 13, 14, 15 and 16 of the statement of claim are admitted in so far as there was a High Court judgment dismissing the case of the plaintiffs in that suit No. E/10/57 but that case has nothing to do with the defendants in the present Suit No. E/216/78 as the parties in the said suit No. E/10/57 are different from the parties in the present suit No. E/216/78 and the land disputed between the parties in suit No. E/10/57 is not the same parties in land in dispute in suit No. E/216/78."* F

Also at paragraph 5 of the statement of defence, the defendants averred as follows:-

*"Further to paragraph 5 of the statement of claim the defendants aver that the said Akpa land is a very large of land and owned and inhabited by various other families including the plaintiffs' family of Umanwazete and the defendant's family of Umuigbudu."* H

Paragraph 6(v) of the statement of defence is also related and

it states thus:

*“Umuigbudu, the defendants’ family also own land within the same land.”*

**The principle of law is well entrenched in our judicial system that he who asserts must prove and whoever desires to have judgment in his favour must establish his case on a preponderance of evidence. Such a party therefore must lead credible and legally admissible evidence in order to succeed. See Sections 131 - 133 of the Evidence Act 2011.**

**The law is also settled that in a claim for declaration of title to land, the onus lies on the plaintiffs/appellants to establish their claim on the strength of their own case and not rely on the weakness of the defendants/respondents. Therefore, the plaintiffs must satisfy the court that based on their pleadings and evidence they are entitled to the declaration sought.** See *Odunukwe v. Ofomata* (2010) 18 NWLR (Pt. 1225) 404 at 445. Also the case of *Ekanem v. Akpan* (1991) 8 NWLR (Pt. 211) 616 at 631 where it was held by this court that:

*“In an action for declaration of title to land it is trite law that the plaintiff must prove title or at least prove to have been in exclusive possession as approved in the case of Ekpo v. Ita II NLR 68 and held further in the case of Idundun v. Okumagba (1976) NMLR 200. Further he must on the strength of his case and not on the weakness of the defence.”*

For the determination of the issue is question therefore the resolution of the two questions posed earlier must consider both the pleadings before the court and the evidence led thereon. As a prerequisite, I wish to quickly consider the appellants’ submission wherein the learned counsel attributed error committed by the two lower courts in holding that the Respondents exercise acts of ownership over the land now in dispute. That finding, counsel submits, does not flow from the copious evidence on record. The same, counsel also argues as perverse and ought to be set aside. This submission by counsel is predicated on the appellant’s contention that the land in the 1957 case is the same as the land in dispute and also that the respondents have consistently and unequivocally denied that they ever exercised any right of ownership over Akpa land in the 1957 dispute.

On the pleadings of the parties issues have been joined in re-

spect of the foregoing allegations by the appellants, counsel. The appellants contend further that the respondents' total denial is unequivocally shown on their pleadings and evidence. In other words both the respondents, pleadings and evidence are called to question.

On whether or not the land in 1957 is the same as the one now in issue, the learned trial court judge held at page 107 lines 17 - 39 of the record and said:-

*"Witnesses for the plaintiffs testify that the land which was the subject matter of the 1957 suit is the same land as the land in dispute in this case. On the other hand the defendants' witnesses deny that the land in dispute in 1957 is the same as the land in dispute in this suit. I have plan No. MEC/275/75 admitted in evidence in this suit as Exhibit 'D'. A copy of Exhibit 'D' was the plan used in the 1957 suit. The plan filed by the plaintiffs in this suit Exhibit 'E' was superimposed on Exhibit 'D'. The result of the superimposition is as shown in Exhibit 'E'. It is clear from Exhibit 'F' that land in present dispute covers a substantial portion of the land disputed in the 1957 suit. D.W.7 the defendants' surveyor confirms that the superimposition in Exhibit 'F' is correct. I am therefore satisfied from the evidence before me especially from Exhibit 'F' and from the oral evidence of P.W.8 and D.W.7 that the land in dispute in this case covers a substantial part of the litigated in the 1958 suit."*

Also at page 109 lines 3-9 of the record, the trial court judge continued and said:-

*"It is quite clear from Exhibits 'A', 'B' and 'C' that the claim and issue litigated in the 1957 suit are not the same as the claim and issue litigated in the present suit. A plea of res judicata although not raised in the pleadings of both parties cannot be sustained in this case if it was raised."*

The plaintiffs' bone of complaint centres on the foregoing view held in the judgment of the trial court in particular the phrase

*"the land in dispute in this case covers a substantial part of the land litigated in the 1957 suit."*

The determination as to whether or not the land in 1957 is one and same as the one now under consideration is a question of fact and a matter of evidence.

It is intriguing for instance to find that the plaintiffs' witnesses gave evidence of material significance and very instructive. I will ex-

amine their testimonies in a greater detail.

PW.1, Godwin Onovo, on page 37 for instance had the following to say:-

B *"The defendants vacated the land of Umuogbu Nevo but did not vacate that of the plaintiffs. The Umuogbu Nevo were defendants in the suit like us. The defendants still live on the land in dispute and would not pay us any rent."*

The same witness PW.1 under cross examination also at pages 38 - 39 said:-

C *"I cannot tell how many Umuigbudu people of the defendants' family live on the land. They are however, very many. They live on this land with their wives and children. They have zinc houses and not mat houses. They had been living on the land before 1957.*

D *It is not true that some of them started living before I was born. They started living from 1948. I was very young when the defendants came to live on the land. I am 38 years old now. The defendants farm on the land and also reap the economic tress on the portions of the land granted to them."*

E PW.2 (the 1st plaintiff) at pages 42 and 43 of the record of appeal in his evidence said:-

*"Umuigbudu have no land in Akpa land. They live inside the village. Some of them however, live on the land in dispute. They went to live there from the village..."*

F *The defendants live on the land in dispute without telling us.... Some told us before going to live on the land."*

Aligning also with PW.1 and PW.3 is PW.4 by name Reuben Onovo whose evidence is least supportive of the appellants, claim. The witness in his testimony at page 45 said:

G *"The other persons who live on the land in dispute are the defendants of Umuigbudu to whom we granted portions of the land."*

Continuing at page 46, the same witness when cross examined by the counsel Mr. Oburu for the defendants had this to say:-

H *"About 23 members of the defendants' family that I know live on the land in dispute. During the civil war, many of the defendants moved into the land and live there. These 23 persons live there with their household i.e. wives and children. The 23 persons are the persons with whom we agreed will be paying tributes to us... I can't remember when I entered into the agreement for payment of tribute*

with the 23 persons. Only 4 of our people live on the land.”

**Intriguing, the witness P.W.4 at page 48 of the record prevaricated when he said:-**

**“According to the history I was told all the communities viz Umuigbudu (defendants), Umunwazete (plaintiffs) Umuogbu Nevo, Amanakwachi and Amankwo all have portions of land both at Akpa and Apiti lands except the Umuigbudu (defendants) who have land only at Apiti and not Akpa.”** <sup>B</sup>

**Without much ado, the witness’s evidence at page 48 supra, is hearsay evidence since he was narrating that which he was told from history. That aspect of evidence is of no probative value with the trite nature of law that hearsay evidence is not admissible. The nature of the witnesses’ evidence however affirms that he is a controversial witness.** <sup>C</sup>

The plaintiff witness P.W.5 in the person of Nwekemba also D gave evidence at pages 48 - 49 and his evidence is a complete destruction of the plaintiffs’ case and again in support of the defendants, case. Certain Extracts of the witnesses’ testimony are very revealing where he said:-

*“I know the land in dispute. It is called Akpa land... Umuigbudu have Akpa land.”* <sup>E</sup>

When the witness was asked a question whether he told the court that Umuigbudu had no land in Akpa land in the 1957 suit, this was his response.

*“I did not say that they had no land there. They, the Umuigbudu started living in Akpa land since my childhood.”* <sup>F</sup>

Also at page 49 the same witness P.W.5 said *“Umuigbudu (defendants) have a portion of Akpa land... It is the portion of Akpa land of Umuigbudu (defendants) that is in present dispute.”* <sup>G</sup>

Under cross examination the witness P.W.5 further said at page 49 -

*“Nevo Ogbu also gave Umuigbudu their Akpa land... It is not true to say that Umuigbudu have no Akpa land.”*

In further corroboration to the evidence of the plaintiffs’/appellants’ witnesses supra, P.W.8 Mathias Chukwura, was the plaintiffs, surveyor whose evidence in chief is contained at page 54 of the record as follows:-

*“I see Exhibits D and E. I superimposed Exhibit ‘D’ which was*

made on imperial measurements into Exhibit 'E' which was drawn on metric into scale. I produced copies of the result of the result of the superimposition. The land surveyed in Exhibit 'D' is the same as the land surveyed in Exhibit 'E' but the area covered by the survey in Exhibit 'D' is larger than the area covered in Exhibit 'E'. The plan B which is a result of the superimposition is plan No. MEC/2126/82. The difference between Exhibit 'D' and 'E' are as follows:-

(i) The Western boundary of the land in Exhibit 'E' is the railway line while on Exhibit 'D', the Western boundary goes beyond C the railway line.

(ii) On the Southern - Western boundary Exhibit 'E' goes more southerly than Exhibit 'D' while on the Southern - Easterly boundary Exhibit 'D' goes beyond the boundary of Exhibit 'E'."

Under cross examination by Mr. Oburu for the defendants, D the witness said:-

"The railway line is inside the plan in Exhibit 'D' whereas it is on the boundary on Exhibit 'E'."

On a question put to the witness as to whether the land surveyed in Exhibit 'D' is entirely different from the land surveyed in E Exhibit 'E', it was the witnesses, response that:-

"It is not true; part of the land surveyed in Exhibit 'D' is the same as part of the land surveyed in Exhibit 'E'."

The witness D.W.7, one Frederick Chukwunyelu Okoli, licensed F surveyor also gave evidence on behalf of the defendants/respondents and testified that the lands in disputed in the case i.e. 1957 and the present are not the same. This was his evidence at page 74 of the record:-

"I see Exhibit 'D'; I also see Exhibits 'E' and 'F'. In Exhibit 'F', G the area verged green covered part of the land shown in Exhibit 'D' but does not correspond with Exhibit 'D' in the South - East and Southern boundaries. The superimposition in Exhibit 'F' is correct in North - East and North - West boundaries. The South - West boundary in Exhibit 'D' (i.e. 1957, plan) did not exceed the Nsusu stream. H I see Nsusus stream in Exhibit H. i.e. the defendants' plan. It cuts across the Railway line. In Exhibit 'E' i.e. the plaintiffs' plan the Nsusu stream is not shown. I see land of Umuwazeke in Exhibit 'D'. It is outside area covered by the plan of Exhibit 'D'."

The learned trial judge, while relying on the evidence given by

PW. 8 and D.W.7 at page 107 held and said:-

*“I have plan No. MEC/275/57 admitted in evidence in this suit as Exhibit ‘D’. A copy of Exhibit ‘D’ was the plan used in the 1957 suit. The plan filed by the plaintiffs in this suit Exhibit ‘E’ was superimposition on Exhibit ‘D’. The result of the superimposition is as shown in Exhibit ‘F’. It is clear from Exhibit ‘F’ that the land in the present dispute covers a substantial portion of the land disputed in the 1957 suit.*

*D.W.7 the defendants’ surveyor confirms that the superimposition in Exhibit ‘F’ is correct. I am therefore satisfied from the evidence before me especially Exhibit ‘F’ and from the oral evidence of PW8 and DW7 that the land in dispute in this case covers a substantial part of the land litigated in the 1957 suit.”*

**It is well established from the foregoing that the land in dispute in the case at hand covers a substantial part of the land litigated in the 1957 suit. The use of this phrase was not disputed by the appellants themselves. It is however the interpretation given therefore by the appellants that is the problem. There is no way what the use of a phrase “substantial part of” could be synonymous to the use of the phrase “same area”. In other words, the lower court could not be faulted when it endorsed the learned trial judge’s finding at page 107 supra, that the land in dispute in the 1957 case is not the same as the one presently in dispute but it covers a substantial part of that which was in dispute in 1957 case.**

**The appellants on their submission vehemently argued the absence of acts of ownership and possession on the part of the respondents. It is pertinent to state at this juncture that with the appellants’ claim originating in trespass and injunction, the title of the subject matter is automatically put in issue.** See the cases of Olubunde v. Adeyoju (2000) 10 NWLR (Pt. 10) p. 562; Akintola V. Lasupo (1991) 3 NWRL (pt. 180) p. 508 and Okorie v. Udom (1960) SC NLR p. 326.

**Therefore, from the nature of the appellants’ case, the law requires them to prove the following as rightly submitted by the respondents’ learned counsel:-**

- 1) That the respondents have no share of Akpa land.**
- 2) That the land in dispute is the same as the one in dis-**

**pute in 1957.**

**3) That the defendants in the present suit are the same as the defendants in the 1957 case.**

**4) That there was a final judgment against the present defendants in the 1957 case.**

**B 5) That the respondents occupy the land in dispute as customary tenants of the appellants.**

**C 6) That they (appellants) exercise acts of ownership and possession extending over a long period of time, and positive and numerous enough to warrant the inference that they were the exclusive owners.**

I have said earlier in the course of the judgment that the general principle of law is well established that in a claim for title to land, as it is the case at hand, the onus is on the plaintiffs to prove their claim on the strength of their case and not rely on the weakness of the defence. See the case of Kodilinye v. Odu 2 WACA 336. **To succeed on a claim for title to land therefore, at least one of the following five methods must be proved as laid down in the case of Idundun v. Okumagba (1976) 9-10 C 227.**

**E a) Proof by traditional evidence;**

**F b) Proof of acts of ownership; acts by persons claiming the land such as selling, leasing, renting out all or part of the land, or farming on it or otherwise utilizing the land beneficially; such acts of ownership must extend over a sufficient length of time and numerous and positive enough to warrant the inference that the claimant is the true owner;** (see the case of Ekpo v. Ita 11 NLR 68).

**G c) Proof by production of documents of title which must be authenticated;**

**d) Proof of ownership by acts of long possession and enjoyment in respect of the land to which the acts are done;**

**H e) Proof of possession of connected or adjacent lands in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.**

The plaintiffs' claim necessitates that they prove exclusive possession of the land in dispute otherwise their claim will fail. See the case of Silas Okoye & Ors. v. Chief Kpajie & Ors. (1973) 1 NMLR 84.



***The presumption of law is also well founded that a person in possession of land is presumed to be the owner thereof. Therefore in order to displace such a person, a claimant (appellants in this case) have to show that the party in possession (i.e. respondents) are in possession either without their consent or are their tenants.*** See the case of *Jinadu v. Esurombi* (2005) 14 NWLR (Pt. 944) 142. B

It is interesting to note that on a communal reading of the evidence adduced by the plaintiffs, witnesses P.W.1, P.W.2, P.W.4 and P.W.5, it is obvious that the totality of their testimonies all go in support of the defendants' case and very much against the plaintiffs themselves. This is evident especially with P.W.1 contradicting his own evidence as to the identification of the lands in the present case and the 1957 case; P.W.2 however was so clear cut in agreeing with the defendants that the lands in 1957 case and the present case are not the same; on the part of P.W.4, further, although his evidence appears to establish the position of the defendants' over and above that of the appellants', he is also in support of the latter's stance that the lands in dispute in the 1957 and the present case are one and the same. The witness, evidence at page 48 as I said earlier is a bunch of contradiction. The evidence of P.W.5 in chief and under cross examination has completely destroyed the plaintiffs' case and worked in favour of the defendants. Reference had been made thereto earlier in course of this judgment. C  
D  
E

In addition to all the evidence by the appellants, which support the contention of the respondents, that they, the respondents exercise acts of ownership and possession over the land presently in dispute, the respondents themselves have been very consistent on their own traditional history. For instance D.W.1 Alhaji Dauda Sule Ugbaja's evidence was in unison with the testimony of D.W.2 Raphael Chukwu also that of D.W.5 - Paul Ani and consequent upon which the trial judge completely rejected the evidence in support of acts of ownership put forward by the plaintiffs and accepted that given by the defendants. D.W.6 was also rated a credible witness. A closer examination of some of the defendants'/respondents' witnesses will better reveal their position. For instance D.W.1 was one Alhaji Dauda Sule Ugbaja and in his evidence in chief he said:- F  
G  
H

*"Besides having and worshipping these shrines on the land...*

*We also live on the land. Many of the members of the defendant's family live on the land. Over 300 members of Umuigbudu family live on the land in dispute. These are mud houses, cement block houses and storey building to the defendants... We have lived on the land from the existence of Obeagu village - from time immemorial. I live*  
 B *in the place where my father lived."*

Under cross-examination the witness said:

*"During the 1957 suit, more than 300 persons of Umuigbudu family were living on the Akpa land. Now there are over 400 persons*  
 C *of Umuigbudu living on the Akpa land. Akpa land in present dispute is one and the same place as where the Umuigbudu family live. We have our ancestral homes on it."*

Raphael Chukwu gave evidence as DW2 and was very consistent with DW1. This was what he also said in his examination in chief:

D *"We live on the land. We plant and reap economic trees on the land... The plaintiffs have no shrines on the land... We the Umuigbudu people of defendants have zinc houses, thatched houses and storey buildings. There are about 400 people of Umuigbudu of defendants living on the land in dispute."*

E Under cross-examination the witness said:-

*"Where my ancestors lived is on the land in dispute. They had lived... there from time immemorial."*

Ogunu Ani also testified as testified as DW6 and this was what  
 F he said in his evidence:-

*"I live in the Akpa land of Umuigbudu. It is the land in present dispute. I am about 60 years old. I have been living on this Akpa land in dispute since my birth. I knew my father before he died. He was a very old man before his death. He lived on the land in dispute. He*  
 G *was born on it. We have shrines on the land which we worship. The shrines are still there. We have several economic trees on the land. We also have our houses on the land including storey buildings."*

On a closer examination of the evidence by the defendants' witnesses and with reference also to the plaintiffs' witness PW1, PW4  
 H and in particular PW5, both in chief and cross examination (supra), the only logical and irresistible conclusion as rightly held by the lower was the following findings by the learned trial court judge when he said:-

*"From the evidence of acts of ownership and possession be-*

*fore me I find no strength whatever in the case of the plaintiffs nor do I find any weakness in the case of the defendants which will lend strength to the case of the plaintiffs. The evidence of acts of ownership led by the defence is such stronger than and preferable to that of the plaintiffs. The defendants' buildings are scattered all over the land in dispute."* B

**The foregoing findings are very well calculated and I cannot but agree with the endorsement made by the lower court that the articulation by the trial court in that behalf was sound and well thought out. The proof of the issue at hand was a matter of evidence and the trial court was in the best position to determine on whose side the pendulum of justice would tilt having seen, heard and assessed the credibility of the witnesses on both sides. The lower court in its review of the evidence on record did a job very well done. Again and as rightly observed by the lower court, the learned trial court judge did clearly comprehend the entire case and rightly came to a conclusion which was abundantly by evidence.** C D

**I further wish to add that the lower court was on the right path as did the trial court in accepting the evidence by the defendants/respondents which was amply supported by the evidence from the plaintiffs, witnesses especially that relating to the confirmation that the defendants/respondents are presently exercising act of ownership over the land presently in dispute.** See Oyadare v. Keji (2005) 7 NWLR (pt. 925) 571. E F

**In the legal parlance, the various material contradictions in the appellants' case and also their admission in favour of the respondents constitute an admission against the appellants' interest.** See the case of Ibrahim v. Shagari (1983) All NLR G 507 at 509 - 510 where his Lordship Irikefe, JSC held and said:-

*"One strange aspect of this case is that apart from the ipse dixit of the appellants, and this did not amount to much by way of admissible credible evidence, the totality of the evidence relied upon in proof of the serious allegations carried earlier in this judgment is the testimony of PW2... The Executive Secretary of FEDECO who is the second respondent, PW15... the chairman and PW16... As would be expected in such a situation, these witnesses as it were helped the petitioner disprove all the allegations he had sought to rely upon. In* H

other words the petitioner with his eyes wide open pulled down brick by brick, the edifice he had erected. The result of this poor strategy was that the Federal High Court had no difficulty in arriving at the conclusion, which it did, that this petition had not been proved - and in dismissing it. There after the aggrieved petitioner took his case to  
 B the Court of Appeal where he fared no better.”

**In the circumstance, the lower court rightly captured the well established principle that where a court of trial unquestionably evaluates the evidence and appraises the facts, it is not the business of a Court of Appeal to substitute its own  
 C views for the views of the trial court.** See the case of Akinloye v. Eyiola (1968) NMLR 92.

I seek to state also that the acts of ownership and possession raised by the defendants/respondents in their evidence relates to the  
 D Akpa land presently in dispute. There was therefore no reason why the learned trial judge should concern himself with the land in dispute in the 1957 case in order to reject the evidence of acts of ownership and possession pleaded and proved by the defendants/respondents in the present case.

The totality of the plaintiffs’ evidence and their witnesses are very much in support of the defendants in proving that they, the defendants exercise acts of ownership and possession of the land presently in dispute. I further seek to emphasize at this juncture that  
 E the plaintiffs, while alleging that the defendants are their tenants, they  
 F did not however adduce any evidence in proof of same.

**On the oral evidence before the trial court, it is evident that some of the plaintiffs’ witnesses did not seem to know what they were testifying to. Therefore, the lower court was  
 G obviously in order when it endorsed the findings of fact by the learned trial judge to the effect that “the land in present dispute covers a substantial portion of the land in dispute in 1957 suit;” also that the defendants exercise acts of ownership over the land in the present dispute.**

**Contrary to the allegation put forth by the appellants’ counsel, the learned trial judge, as rightly concluded by the lower court judge did not make out any case for the defendants. Rather, his findings were based on the evidence before  
 H him.**

**Issue 1 is, in the circumstance resolved against the appellants, who had misunderstood the totality of the proceedings before the trial court and its judgment in particular the use of the phrase “the land in dispute in this case covers a substantial part of the land litigated in 1957 suit.” The findings was endorsed by the lower court to the effect that the land now in dispute is not one and the same as that in dispute in the 1957 case. In other words the foregoing findings was well established on the pleadings and the evidence before the trial court and this was approved by the lower court which is now further affirmed by this court that the respondents exercise act of ownership over the land now in dispute.**

Issue 2 questions whether the pleadings and evidence of traditional history adduced by the appellants were sufficient and conclusive enough to sustain their claim.

The appellants’ bone of contention in proof of their title is entered on paragraph 8 of their statement of claim which forms the nucleus of their complaint which they allege has not been specifically denied by the respondents but deliberately left untraversed and therefore remains unchallenged; that the law is settled that a defendant who wishes to deny any allegation on the plaintiffs’ claim must do so clearly and unambiguously so that the court and his adversary will, with certainty know he is not admitting. It is the counsel’s submission that traverse must be specific not general, it must clearly allude to the facts pleaded and not be evasive and ambiguous. The following authorities are cited in support L.C.C. v. Ogunbiyi (1969) 1 All NLR 297 at P:299; Ajibade v. Mayowa & Anor. (1978) 9 and 10 SC. 16; Eko Odume v. Ume Nnachi & Ors. (1964) 1 All NLR 329; Atta & Ors. v. C. Nnacho & Ors. (1965) NMLR 28 and Akanbi v. Salawu G (2003) 13 NWLR (838) P9 - 10.

It is the appellants’ contention therefore that since their traditional evidence was not challenged or contradicted by the Respondents, who instead admitted and adopted same contrary to their pleadings of a grant to their ancestors, it was wrong of the court to have rejected the appellants’ version and preferred that by the respondents to the effect that their (respondents’) ancestor was granted a portion of Akpa land and for which there was no evidence whatsoever. The counsel copiously referred to the respondents’ pleading

which he submitted did not plead any traditional history of their own but rather did admit by paragraph 9 of their statement of defence the averment by the appellants paragraph 8 of their statement of claim; that the lower court was therefore in great error when it endorsed the view held by the trial court at page 328 of the record; that the evidence of D.W.'1', which was accepted by the trial court and endorsed by the lower court is contrary to the history of a grant to Nevo Ogbu as pleaded by the respondents and which goes to no issue. It is the further submission by the appellants' counsel that the respondents never joined any issue on the appellants' traditional history. The court was therefore urged to hold that the appellants have proved their traditional history and ownership of the land in dispute by inheritance and hence the reason why this court should enter judgment in their favour.

Contrary to the submission held by the appellants' learned counsel, it is again submitted positively on behalf of the respondents that the lower court Justices like the learned trial judge, were perfectly right in holding that the plaintiffs/appellants failed to produce satisfactory evidence of traditional history. The counsel's further contention is that paragraph 9 of the respondents' statement of defence was not an admission of the appellants' averment at paragraph G of their amended statement of claim; that the contention and cases relied upon by the appellants are thus of no moment whatsoever and should not require any further consideration.

Counsel submits also that the respondents were in the circumstance merely denying the appellants' traditional history concerning the land in dispute; that the onus of proving that the land in dispute was granted the appellants' ancestor, still rested on the appellants and not on the respondents. Section 131 of the Evidence Act 2011 was cited in reference and also the evidence of P.W.'5'; that the view held by the learned trial Judge at page 98 of the record was not an admission by the respondents of the appellants' traditional history as set out at paragraph 8 of their statement of claim. Rather that the converse was the true position, wherein both in their pleadings and evidence, the defendants/respondents emphatically denied that the land in dispute was inherited by the plaintiffs/appellants through their ancestor; that the entire traditional evidence of the plaintiffs/appellants was marred by contradictions, inconsistencies, prevarications,

and incompleteness; that the learned trial judge and the court below were therefore right to hold that it was unsatisfactory. Further reference was made to the case of Gaji v. Paye (2003) 8 NWLR (Pt. 823) 583 at 610. It is also the submission of learned counsel that in the absence of satisfactory and conclusive evidence of traditional history adduced by the appellants to sustain their claim, the court should resolve this issue in favour of the respondents. B

The two relevant paragraphs predicating this issue are paragraphs 8 and 9 of the statement of claim and statement of defence respectively. C

The plaintiffs in paragraph 8 of their statement of claim pleaded traditional history which forms the foundation of their claim and it reads:-

*“8(i) The Obeagu village has a common ancestor called Ogbunwezeogo and the whole land including the land in dispute originally belonged to him. D*

*(ii) The said Ogbunwezeogo had two sons namely Anya Ogbu and Nevo Ogbu in order of seniority.*

*(iii) The plaintiffs are descendants of Anya Ogbu while the defendants descend from Nevo Ogbu E*

*(iv) Before his death Ogbunwezeogo the common ancestor shared his land between the two sons.*

*(v) Anya Ogbu, the ancestor of the present plaintiffs inherited his portion of land which included the land in dispute.” F*

In response to the foregoing averment, the defendants/respondents said thus at paragraph 9 of their statement of defence:-

*“9. Paragraph 8 of the statement of claim is admitted excepting that Nevo Ogbu is the senior son of Ogbunwezeogo and not Anyi Ogbu and the land in dispute was never granted to Anyi Ogbu the G ancestor of the plaintiffs. The defendants’ own portion of Akpa land was granted to Nevo Ogbu the ancestor of the defendants.”*

While the plaintiffs’ counsel contends that the defendants admitted plaintiffs’ traditional history as pleaded in paragraph 8 of their claim, the defendants denied that paragraph 9 of their statement of defence was not an admission as alleged by the plaintiffs/appellants. Put differently and simply, it is the defendants’ view that the land in dispute was granted to their ancestor Nevo Ogbu and not to Anyi Ogbu, the ancestor of the plaintiffs. The respondents, from the fore- H

going, were therefore merely denying the appellants' traditional history concerning the land in dispute. Consequently, the onus of proving that the land in dispute was granted the appellants' ancestor still rested on the appellants and not on the respondents. Section 131 of the Evidence Act 2011 is in point.

B ***The law is well settled that where the plaintiff and the defendant in a suit for title to land both seek to prove ownership by traditional history evidence, the duty of the trial court is to weigh their evidence on an imaginary scale and determine which of the two sides is weightier.*** See Okoko v. Dakolo  
C (2006) 14 NWLR (Pt. 1000) 401. The proof of the issue at hand is a matter of evidence. PW.1 in his evidence in - chief positively declared that *"Umuigbudu family has no land in Akpa land."* Under cross examination he said:-

D *"I said that Ogbunweogo had two sons viz Anya Ogbu and Nevo Ogbu. I also said that he shared his land and part of the land we inherited was the Akpa land. The land inherited by the defendants was in the village. It has no name. The family land inherited by the defendants is called the 'Apiti'..."*

E PW.'4' Reuben Onovo also gave evidence in the same vein where in chief he said:-

*"The present descendants of Nevo Ogbu are the Umuigbudu i.e. the defendants. The defendants of Umuigbudu have no portion of the Akpa land... The name of the portion given to Nevo Ogbu is 'Apiti' land."*  
F

However, PW.'5' Nweke Mba was also plaintiffs' witness and his evidence was a complete contradiction of both PW.1 and PW.4. To the dismay of the plaintiffs' claim, the witness admitted that the defendants have their own portion of Akpa land. It was also his evidence that "it is the portion of Akpa land of Umuigbudu (defendants) that is in present dispute." Even under cross examination the witness remained resolute and said:

*"Nevo Ogbu also gave Umuigbudu their Akpa land. The ancestor of Umuigbudu Nevo was the elder brother of the ancestor of Umuigbudu Nevo. It is not true to say that Umuigbudu have no Akpa land. All the descendants of Nevo Ogbu have portion of Akpa land."*  
H

As rightly submitted on behalf of the respondents, it is not true as alleged by the appellants in their brief that the respondents admit-



ted the traditional history as set out by the appellants in paragraph 8 of their statement of claim.

On whether or not the learned trial judge found that respondents admitted the appellants' traditional history, reference can be made to the trial court's findings at p. 98 of the record where it said:-

*"The Defendants agree with the plaintiffs that both parties to this dispute have a common ancestor Ogbunwezeogo. He had two sons - Anyi Ogbu and Nevo Ogbu. The plaintiffs are the descendants of Anyi Ogbu while the defendants are the descendants of Nevo Ogbu. Although both parties disagree as to who is the elder of the two sons of Ogbunwezeogo, this does not seem to be important in deciding this case as both parties agree that their common ancestor shared his land between his said two sons. The defendants' case is that Ogbunwezeogo had the Akpa land. Before his death, he shared it between his aforementioned two sons. The one in present dispute is the share of Nevo Ogbu the ancestor of the defendants. On the death of Nevo Ogbu, his share of Akpa land was inherited by his son Igbudu and therefore by his descendants Umuigbudu. Nevo Ogbu begat Umuigbudu Nevo Ogbu and Umuogbu Nevo Ogbu and between whom he shared his Akpa land each of them taking a portion."*

On a community reading of the foregoing, it cannot be inferred, as wrongly conceived by the learned counsel for the appellants, that the learned trial judge found that the respondents admitted the appellants' traditional history. Rather and as rightly submitted by the respondents' counsel, the findings supra were merely a summary of the respondents' own traditional history which in material respect is completely different and contradictory to that of the appellants. I also wish to re-affirm that the respondents' evidence of traditional history is in line with and in accord with their averment in paragraph 9 of their statement of defence; therefore, the appellants' contention that the said evidence goes to no issue is grossly misconceived.

On the submission as to whether the plaintiffs' traditional evidence was not challenged or contradicted, reference can therefore be made to the defendants' pleadings and evidence where they vehemently denied that the land in dispute was inherited by the plaintiffs through their ancestor. Their evidence was supported again by the testimony of P.W.5. I have earlier in the course of this judgment emphatically alluded to the prevarication by P.W.4 in his evidence.

On the part of the defendants however I will further re-affirm that they were very consistent on their own traditional history. Re-course can for instance again be had to the evidence of D.W.1 Alhaji Dauda Sule Ugbaja when he said:-

*“Ogbunwezeogo was the father of Nevo Ogbu and Anyi: Anyi Ogbu was the ancestor of the plaintiffs while Nevo Ogbu was the ancestor of the defendants...Ogbunwezeogo who was the ancestor of the plaintiffs and defendants had a portion of Akpa land during his life time. Before his death he shared his land between his two sons Nevo Ogbu and Anyi Ogbu. The Akpa land in present dispute was the share of Nevo Ogbu the ancestor of the defendants. On the death of Nevo Ogbu his share of Akpa land was inherited by the Umuigbudu i.e. the defendants. The land in present dispute is the defendants’ portion of Akpa land. The plaintiffs have left their own Akpa land and are disputing our own.”*

It is informative to state that the Witnesses D.W.2 Raphael Chukwu and D.W.5 Paul Ani also gave similar evidence in corroboration to D.W.1.

In the face of the foregoing evidence, the communal reading is to uphold the lower court’s conclusion when it endorsed the view held by the trial court in rejecting the traditional evidence of the plaintiffs’ and preferred that of the defendants’. The case in point is *Idundun v. Okumagba* (supra) wherein the law is well settled that there are five ways in which ownership of land may be proved.

In the first place, ownership of land may be proved by traditional evidence and this has been the situation with the case at hand and thus justifying the reason why the learned trial judge rejected the plaintiffs’ evidence and the affirmation by the lower court was, I hold, a decision in the right direction.

Secondly, ownership of land could further be proved by production of documents of title. The situation at hand is not based on any document of title and therefore not applicable.

The next mode of proof is by the acts of the person or persons claiming the land such as selling, leasing or renting out all or part of the land. Other exercise of act of ownership include farming on the land or on portion thereof, provided the acts have extended over a sufficient length of time and are numerous and positive enough as to warrant the inference that the person/persons is/are the true owner(s).

See the case of Ekpo v. Ita (supra). Judging from the reference made to the evidence adduced before the trial court supra it is evident that the court, having evaluated the testimonies of witnesses had good reason in rejecting the evidence in support of acts of ownership put forward by the plaintiffs and rightly accepting the evidence by the defendants. The lower court I hold cannot also in the circumstance be faulted in affirming the conclusion reached by the trial court. B

It is also a well settled principle that acts of long possession and enjoyment of the land may again be prima facie evidence of ownership of the particular piece of land with reference to which those acts are done. In the case at hand the learned trial judge, in addition to accepting defendants' evidence relating the presence of the four plaintiffs on the land, also found that defendants have proved by evidence, that they are the owners of the Akpa land in dispute; the evidence was overwhelming before trial judge. Both lower courts in my view cannot in any way be faulted but acted in the right direction. C D

The fifth and final way of proving title is the possession of connected or adjacent land, in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner of the land in dispute. The evidence led by the plaintiffs before the trial court did not attest to this method of proof. E

Suffice it to say that the trial court after evaluating the evidence by both parties made the following findings and said:-

*"I have no doubt in my mind from the evidence of traditional history and of acts of ownership and possession that the Akpa land in dispute is that of the defendants. The onus is squarely on the plaintiffs to prove to the satisfaction of the court that the land in dispute belongs to them and that they are entitled to the declaration sought. On a calm review of the evidence... before me, it is my considered view that the plaintiffs are far from discharging this burden. The plaintiffs have failed to produce satisfactory evidence of traditional history or acts of ownership or exclusive possession to show that they own the land they claim."* F G

The lower court also in its findings held and said:- H

*"In the face of the evidence before the trial court, the learned judge was right in rejecting the traditional evidence of the plaintiffs and preferring that of the defendants."*

I cannot agree more with the views held by the two lower

courts and I also endorse same and resolve the 2nd issue against the appellants.

Issues 3 and 4 are closely related and will be taken together for convenience. While the 3rd issue questions whether the appellants have established acts of ownership and possession, the 4th issue however is whether the lower court averted its mind to the acts of possession alleged/pleaded by the appellants.

The learned counsel for the appellants relied on paragraph 9 and 10 of both statement of claim and statement of defence respectively and gave the following reasons why the issues should be resolved in their favour:-

1). Because the appellants have exercised such acts of ownership and over a long period of time including successfully resisting a court action against the Respondents in 1957 in respect of the same land now in dispute.

2) Because by their own pleadings and evidence the Respondents do not live on or exercise any acts on the land in dispute which is found to substantially cover the same land as they had unsuccessfully litigated with the appellants as far back as 1957.

3) Because the appellants live and exercise various acts of ownership and possession over undefined portions of the land in dispute.

In response to the foregoing submissions on issues 3 and 4, it is the contention of the respondents' counsel that the plaintiffs/appellants have woefully failed to prove ownership and/or exclusive possession of the land in dispute and therefore their claim inevitably failed. Counsel also submitted the wrong conception held by the appellants' counsel that the trial court treated the 1957 case as *res judicata*. Rather that the earlier case was not a straight fight between the plaintiffs/appellants on one side and the defendants/respondents on the other.

On the question of issue 4, the counsel re-iterates the settled legal position that in a claim for title to land, the onus is on the plaintiffs to prove their case on its own strength and not rely on the weakness of the defendants' case. See *Kodilinye v. Odu* again under reference (*supra*). The totality of the submission by the respondents' counsel re-affirms position the taken by the lower court wherein it averted to the acts of possession alleged/pleaded by the appellants and found same unsatisfactory.

**As rightly submitted by the learned respondents' counsel, the law is well grounded that in a claim for trespass, the plaintiffs must prove exclusive possession of the land in dispute otherwise their claim fails.** See *Silas Okoye & Ors. v. Chief Kpajie & Ors.* (1973) 1 NMLR 84. **It is also apparent that in the case at hand, all the reliefs claimed by the plaintiffs were predicated on ownership or exclusive possession of the Akpa land in dispute. It will follow therefore that the absence of proving ownership or exclusive possession of the said land will automatically also affect the other reliefs which must necessarily fail.**

The learned counsel representing the appellants relied heavily on paragraph 9 of their statement of claim which reproduction states:-

*"9. The plaintiffs have their homes on the land in dispute and these include the homes of Okafor Mba, Nwodo Ede, Nworie Ogo and Christiana Ani."*

In response the respondents also had the following to say at paragraph 10 of their statement of defence:-

*"10. Paragraph 9 of the statement of claim is denied and further to paragraph 9 of the statement of claim it is not true that the persons mentioned in the said paragraph as having their homes on the said land in dispute were put thereby the plaintiffs; rather it is the defendants who put these people on the land viz:-*

*(a) Christian Ani was granted a portion of land in dispute by the late Ogbueze Nwede a member of Umuigbudu family because he was a Sunday School Teacher teaching the children of the defendants and he requested to be given a house to live near the mission compound and he was so allowed by this Ogbueze Nwede now deceased.*

*(b) Nwodo Ede and Nwafor Ogo were also granted land for their homes in the land now in dispute by the late Ogbueze Nwede whose mother hails from the family of Nwodo Ede and Nwafor Ogo.*

*(c) Nworie Ogo was granted land on the land in dispute by 1st defendant in this suit Nwagbara Nwaodo Mba because Nworie Ogo is his son in law by marriage.*

*Furthermore all the defendants and the entire members of Umuigbudu live and have their homes on the land in dispute from the immemorial."*

With the onus on the plaintiffs to prove exclusive ownership in a claim for trespass, it is not therefore enough that the plaintiffs should only prove that a few members of their family occupy some portions of the land in dispute. The learned trial judge was satisfied with the explanation given by the defendants why few members of the plaintiffs' family were in occupation of some portions of the land in dispute. This is in consonance with the defendants' pleadings at paragraph 10 supra. For instance the defendants' witness D.W.1 Dauda Sule Agbaje in his testimony at page 59 of the record of appeal had this to say:-

*"Four persons from the plaintiffs' family live on the land. They are Nweke Agbara alias Christian Ani, Nwodede Angene, Okafor Mba, Nworie Ogo. Christian Ani was given a place because he was a Sunday School Teacher and where he was living was far from the Methodist Church on the land. Okafor Mba and Nwodede Angene were given land there by Chief Ogbueze Nwede because his mother comes from the plaintiffs' family. Nworie Ogo was given by the 1st defendant because Nworie Ogo is the son-in-law of the 1st defendant."*

The evidence of P.W.6 also corroborates that of D.W.1 supra, P.W.4 also under cross examination said:-

*"About 23 members of the defendants' family that I know live on the land in dispute... Only 4 of our people live on the land."*

This, as rightly submitted by the learned counsel for the respondents, is in gross contrast to the over 400 defendants who live on the land. I repeat again that the consequential effect of the plaintiffs' failure to prove ownership and/or exclusive possession of the land in dispute is that their claim must fail as rightly found by both lower courts. Therefore, and contrary to the submission by the learned counsel for the appellants, I hold the view that the lower court did properly avert its mind to the purported but unproved acts of possession by the appellants and the legal effect thereof as it held that they were *"examined meticulously and rejected by the learned trial judge for good reasons. In such circumstances, I find myself unable to interfere with the findings and decision of the learned trial judge."* I also endorse that conclusion as well founded.

***Again and contrary to the submission by the appellants' counsel, the contention that the appellants have been in possession of the said land in full and undisturbed exercise of their***

***right of ownership is grossly unfounded and a complete misconception of the entire case at hand. This is more so when regard is had to the earlier conclusion arrived at that the land subject of contention in the 1957 case is distinct and completely different from the land now in dispute and before this court. The 1957 case, in other words, has no bearing or any added value or significance to the appellants' case. As rightly pointed out by the lower court, the judgment in that suit did not confer any title on the appellants; this is especially where there is no such evidence on record. It could therefore only be imagined but cannot sustain either a plea of res judicata or be relied upon as evidence of acts of possession in the absence of such title to the land then in dispute.***

I wish to also add that the appellants are appealing against two concurrent judgments of the lower courts.

Without having to belabor and over flog the point, the appellants have not met the conditions set to warrant this court interfere with the judgments of the two lower courts.

Issues 3 and 4 are also in the circumstance resolved against the appellants.

On the totality of the entire appeal therefore and with all the four issues resolved against the appellants, the appeal is devoid of any merit and accordingly dismissed.

With costs following events, I will assess same at N200,000.00 in favour of all the respondents against the appellants.

---

### **MUHAMMAD JSC**

I have read before now the judgment just delivered by my learned brother, Ogunbiyi, JSC.

I am in agreement with my lord that the appeal lacks merit. I too, dismiss the appeal. I abide by all orders made in the leading Judgment including one on costs.

---

### **MUNTAKA-COOMASSIE JSC**

I was opportuned to read in draft the lead judgment rendered by my noble lord Ogunbiyi, JSC. I have carefully gone through the

reasoning and conclusions leading him to dismiss the appeal. I completely agreed that the reasons and conclusion are correct and I beg to adopt them as mine.

I calmly agreed that in most cases, for every general rule, there shall be an exception, this appeal falls into the exception. In the instant case; the Appellants failed to bring themselves into the exception in that they failed to establish the identity of the land now in dispute. They also failed to prove exclusive possession of the land in dispute.

Again there is another point militating against them; namely there are two concurrent decisions or the lower courts. - Bankole v. Pelu (1991) 1 NWLR (Pt. 211) 23.

It is from above brief analysis of mine and the fuller reasons adumbrated in the read judgment that I hold that this particular appeal lacks merit and deserved to be dismissed and consequently I too dismiss the appeal for lack of merit. I endorse the order as to costs.

### **NGWUTA JSC**

I have had the opportunity of considering the exhaustive reasons prepared by my learned brother, Ogunbiyi, J.S.C. I am in agreement with the conclusion reached. I desire to add only a few brief observations.

The main claim is:

*“A declaration of title to a customary right of occupancy of the said piece or parcel of land situate at Obeagu Ugbawka and called ‘Akpa Land’ which land is more particularly delineated in the plan attached thereto.”*

See paragraph 23 of the Statement of Claim.

From the trend of the pleadings and evidence adduced by the parties upon same, the claims for general damages for trespass and perpetual injunction seem dependent on the claim for declaration of title. In other words, the claims for damages for trespass and injunction will sink or swim as it were, with the claim for declaration.

Declaration of a right, including the right of occupancy or title to land is an appeal to the discretion of the Court. It can be granted or denied by the Court subject to certain conditions. See Sunday Eguamwense v. Amashizemwen (1993) 9 NWLR (Pt. 315) 1 at 30



SC; Egbunike & Anor v. Muonweoku (1961) 1 SCNLR 91.

What is discretionary is not compulsory. It is left to the discretion of the Court to grant or deny declaration.

*“Discretion, when applied to a Court of justice, means sound discretion guided by law. It must be governed by rule not by humour; it must not be arbitrary, vague and fanciful, but legal and regular.”* B

Per Lord Mansfield Wilkes (1263) 4 Barr (Pt. IV) 2539.

Discretion means equitable decision of what is just and proper under the circumstances or a liberty or privilege to decide and act in accordance with what is fair and equitable under the peculiar case guided by the principles of law. See Artra Industries Nigeria Ltd v. The Nigerian Bank for Commerce and Industries (1998) 4 NWLR (Pt. 546) 381 SC; Doherty v. Doherty (1960) 1 All NLR 299. C

Faced with a declaratory relief, the Court draws inspiration from consecrated principles, one of which is that the party seeking the relief must adduce evidence upon which the relief is granted or denied, notwithstanding an admission in the defendant’s pleadings. The Court has to be satisfied on the evidence led by the plaintiff that he is entitled to the relief he seeks. See Motunwase v. Sorungbe (1999) 5 NWLR (Pt. 92) 90. E

The claimant must succeed on the strength of his case, and not on the weakness or even admission of his opponent. See Umesie v. Onuaguluchi (1995) 9 NWLR (Pt. 421) 1 SC 101; Gankon v. Ugochukwu Ind. Ltd (1993) 7 KLR 169.

A plaintiff can establish his entitlement to a declaration of title by any of the modes stipulated in Idundun v. Okumagba (1976) 10 SC 227 at 246. See also Nwosu v. Udejaja (1990) 3 WBRNI 25; Kyari v. Alkali (2001) 87 CRCN 2096. Based on the principles outlined above, did the appellants as plaintiffs, satisfy the Court on their pleading and evidence, that they are entitled to the declaration sought? F

First, was the land in dispute properly identified on the pleading and evidence of the appellants to persuade the trial Court to exercise its discretion in their favour?

In paragraph 13 of the Statement of Claim, it was made clear that Suit No. E/10/57 involved a larger piece of land which included the land in dispute in this case. In other words, the land now in dispute is with the larger piece of land in dispute in E/10/57 and this is different from the assertion by PW1 that: “...it is the same area as H

litigated in 1957 that is being litigated now.”

Contradicting the PW1 on the specific identity of the land vis-a-vis the land in dispute in E/10/57 PW2 said, at page 43 of the record:

B *“... The Akpa land in 1957 is different from the Akpa land in present dispute.”*

As if to confound the identity of the land in dispute in this case relative to the land in dispute in suit No. E/11/57, the PW4, Reuben Onovo, at page 46 of the record sworn that:

C *“The Akpa land in present dispute is the same as the Akpa land in the previous Enugu High Court suit, i.e. as in Exhibit A, B & C.”*  
So much for the identity of the disputed land.

D Now who, on the appellants’ pleading and evidence, are in possession of the Akpa land in dispute? In paragraph 7 of the Statement of Claim the appellants pleaded:

E *“The land in dispute is owned, possessed and has been from time immemorial been owned and possessed by the plaintiffs. As owners in undisturbed possession of the said land in dispute the plaintiffs have been exercising maximum acts of ownership without let or hindrance from anybody by farming on the land in dispute...”*

At page 38 of the record, PW1, Godwin Onovo, said he could not tell how many Umugbudu (defendants) people live on the land in dispute. He said, inter alia:

F *“They are however, very many. They live on this land with their wives and children. They have zinc houses and not mat houses. They had been living on the land before 1957.”*

G He added that the Respondents started living on the land from 1948 notwithstanding that the claim filed in July 1978 averred that the appellants had been in undisturbed possession from time immemorial.

H PW2 claimed that Umugbudu had no land in Akpa land but conceded that some of them live on the land in dispute. This witness dealt a devastating blow to the appellants’ case based on claim of undisturbed possession when he swore that:

*“The defendants were on the land in dispute without telling us...”*

Appellants cannot claim exclusive undisturbed possession of the land in dispute on which, from their own ipse dixit, the respon-

dents live and had been so living since 1948 without their permission. At best, the appellants' witnesses gave evidence of joint possession by the appellants and respondents — two adverse parties laying adverse claim to the land. The law does not allow concurrent possession of land by adverse parties. See *Amakor v. Obiefuna* (1974) 3 SC 67; *Umesie v. Onuaguluchi* (1995) 9 NWLR (Pt. 421) 515; *Ekpan & Anor v. Uyo & Anor* (1986) 3 NWLR (Pt. 76) 63. B

Consistent with the principle, as an exception to the general rule of Court and evidence law that what is admitted needs no proof, the Court will require the plaintiff to prove his case on the strength of the evidence led and not even on the admission in the defendants' pleadings. C

In *Onyekaoriwu v. Ekwubiri* (1966) 1 All NLR the Court held that once a claimant to declaration of title has discharged the primary onus of acts of possession, he has established a *prima facie* case that he is the owner of the land and thereupon throws the burden to disprove on the defendant. D

In the case at hand, the appellants failed to establish the identity of the land now in dispute relative to the land in dispute in Suit No. E/10/57. Nor did they prove exclusive possession of the land. E

The principle of inviolability of concurrent findings of a trial Court and an Appeal Court is not as immutable as the Holy Writ. It is subject to exceptions. See *Lokoyi & Anor v. Olojo* (1983) 8 SC 61 at 68; *Bankole v. Pelu* (1991) 8 NWLR (Pt. 211) 23; *Akinsanya v. UBA Ltd* (1986) 4 NWLR (Pt. 35) 273. The appellants have failed to bring their case within the exception to the rule. F

It is for the above and the fuller reasons in the lead judgment that I agree that appeal has no merit and consequently I also dismiss same. I adopt the order for costs. G

### **ARIWOOLA JSC**

My learned brother Ogunbiyi, JSC obliged me with a draft of the lead judgment His Lordship just rendered. H

The appellants were plaintiffs before the trial High Court of Enugu State where they claimed against the defendants/respondents, declaration of title to customary right of occupancy of the land in dispute, damages for trespass and a perpetual injunction.

It is on record and very clear that both parties agreed and there was no dispute whatsoever that both parties originated from and share a common ancestor - Ogbu Nwezeogo who had two sons namely Anyi Ogbu and Nevo Ogbu. Both parties descended from the two sons respectively.

B As clearly shown in their respective pleadings and evidence adduced, both parties relied on traditional history and acts of ownership and possession. The appellants however, also relied on the judgment in a case in 1957 to further support their claim to ownership of the land in dispute. The dismissal of their claims by the trial court and  
C the appeal by the court below led to the instant appeal before us.

It is already settled, that title to land may be proved by either of the following:

(a) Traditional evidence;  
D (b) By production of duly authenticated documents;  
(c) Acts of ownership extending over a sufficient length of time numerous and positive enough as to warrant the inference of true ownership.

(d) By acts of long possession and enjoyment.  
E (e) Proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner. See *P. O. Idundun & Ors v. Daniel Okumagba* (1976) 9-10 SC 224 at 227, (1976) 1 NMLR 200; (2002) 20 WRN 127 at 186.

F As earlier stated, a plaintiff claiming title to a particular parcel of land does not need to prove all the above five methods or ways to establish his claim. They are not conjunctive and it is sufficient if only one of the way(s) is proved. See; *Peter Ojoh v. Owuala Kamalu & Ors* (2005) 12 SCM 332; (2005) 18 NWLR (Pt.958) 523 at 574 -  
G 575.

However, in a claim for declaration of title to land as in the instant, the law is trite that the onus is squarely on the plaintiff to establish his title upon preponderance of evidence or on the balance  
H of probability. In which case, he must succeed purely on the strength of his own case but not upon the weakness of the case of the defendant, except only where the defendant's case supports his case. See; *Kodilinye v. Odu* 1 LLAC 254; 2 WACA 336; *Onwugbufor v. Okoye* (1996) 1 NWLR (Pt. 424) 252; *Shittu v. Fashawe* (2005) 14 NWLR

(Pt. 946) 671; (2005) 10-11 SCFM 330; Eze v. Atasie (2000) 9 WRN 73 at 881 (2000) 10 NWLR (Pt. 676) 470; Adesanya v. Aderonmu (2000) 13 WRN 104 at 115; (2000) 9 NWLR (Pt. 672) 370.

Ordinarily, and there is no controversy on it, that in a claim for declaration of title, where the defendant does not file a counter claim, the burden is heavier on the plaintiff as claimant to prove his title to the land in dispute. The defendant certainly has no duty at all to prove his title to the same land in dispute. See: Adekaibi v. Jangbon (2007) All FWLR (Pt. 383) 152 at 160 (2007) 24 WRN 45 at 57; Elias v. Disu (1962) All NLR (Pt. 1) 214 at 220 (1962) 1 SCNLR 361.

As shown in their pleadings, the claim of the appellants as presented before the trial court required that they prove that they are in exclusive possession of the land in dispute as against the respondents.

However, as clearly analysed by my learned brother in the lead judgment, the evidence adduced by the appellants through their witnesses, support the position of the respondents that they are actually in possession of the land in dispute. The trial court was therefore right in rejecting the evidence adduced by the appellants in support of their exclusive possession to the land in dispute.

From the findings of the trial court on the evidence adduced by the appellants, the trial court rightly opined as follows:

*“From the evidence of acts of ownership and possession before me I find no strength whatever in the case of the plaintiffs nor do I find any weakness in the case of the defendants which will lend strength to the case of the plaintiffs. The evidence of acts of ownership led by the defence is such stronger than and preferable to that of the plaintiffs. The defendants’ buildings are scattered all over the land in dispute.”*

I am not in the slightest doubt that the above findings by the trial court was well founded and the support given to it by the court below is unassailable. The appellants indeed failed to prove that they are entitled to declaration of title to customary right of occupancy of the piece or parcel of land in dispute situate and lying at Obeagu Ugbawka and called Akpa land against the respondents. Their claims were properly dismissed by the trial court which dismissal was rightly affirmed by the court below.

For the above reason and the fuller and more detailed reasoning of my learned brother Ogunbiyi, JSC in the lead judgment, I am

in total agreement with the reasoning and conclusion that the appeal is unmeritorious and deserve to be dismissed. I dismiss same and abide by the consequential order of costs in the lead judgment.

B

C

D

E

F

G

H