In The Supreme Court of Nigeria

On Friday, the 10th day of February 2006

S.C. 214/2001

Before Their Lordships

Salihu Modibbo Alfa Belgore	.....	Justice, Supreme Court
Akintola Olufemi Ejiwunmi	.....	Justice, Supreme Court
Ignatius Chukwudi Pats-Acholonu	.....	Justice, Supreme Court
Aloma Mariam Mukhtar	.....	Justice, Supreme Court
Ikechi Francis Ogbuagu	.....	Justice, Supreme Court

Between

Chief S.O. Awoyoolu Mrs. Susan Ajoke Bakare	.....	Appellants

And

Sufianu Yusuf Aro Fatai Lawal Bakare	.....	Respondents

Judgment of the Court

Delivered by

Salihu Modibbo Alfa Belgore. JSC

The appellants herein were the appellants at Court of Appeal having lost as defendants at Lagos High Court. The respondents as plaintiffs claimed that one Ogunbuwa, a hunter and farmer who hailed from Ile Ife, after several adventures, finally settled on a vast expanse of land at Idimu, now in Lagos State. He exercised total act of ownership on the said land by farming, hunting and establishing hamlets thereon. He also established shrines for the worship of Ogun, Moremi, Sango, Igbale and Oro. He also gathered fruits and tapped palm wine on the land. However, he was survived by an only child, a daughter by name, Ogunbunmi. During his lifetime, Ogunbuwa gave Ogunbunmi to one Aina Olaofe of Ikotun as wife. Aina Olaofe then, with his wife, Ogunbunmi, settled on the land in dispute. Thereafter, ostensibly on the demise of Ogunbuwa, Olaofe and his wife Ogunbunmi exercised maximum right of ownership over the disputed land at Idimu. The marriage produced five issues, to wit Fasenro, Bakare-Garba, Sanni, Audu Bola, and Basesomo. Audu Bola and Basesomo had died intestate and the entire estate land in dispute devolved on Fasenro, Bakare Garba, and Sanni as the land was not partitioned. It remained so up to today with their children in control. The family became the chieftaincy family called Aro.

The plaintiffs had remained in absolute possession for more than two hundred and fifty years, undisturbed by anybody or any adverse claim. The only exception was a challenge in suit No 221 of 1915 - *Bakare Garba v Akiniola Adenike*, which ended in Aro Family's favour. The interest of the family as a result of the suit was registered as No 34 at Page 34 Volume 1473 of Land Registry, Lagos. However, between 1990 and 1991 the defendant Samuel Ogunlana (deceased and substituted as defendants by present appellants) encroached on the land in dispute and was duly challenged by notices and letter from solicitor to the family. Thus the suit leading to this appeal when the defendants refused or ignored the notices and warnings and persisted in encroaching on the land. It must be mentioned that the original defendant who died and has been substituted was known by various aliases, to wit, "Samuel Ogunlana", "Samuel Lout Akinogun, & Family" and "Odejobi Akinogun & Family".

After a long delay in effecting service of process of Court on defendant an interim injunction was granted forbidding him from further trespassing on the land in dispute: But he failed on several occasions to appear in court despite being served with the court processes.

When finally the defendant appeared, having been substituted, a statement of defence was filed denying not only every averment in plaintiffs statement of claim but claimed even ignorance of the existence of plaintiffs family. He then claimed that one Akinogun who established Ogun shrine on the land first settled there. There was also a counter-claim to the plaintiffs' suit.

Learned trial judge found the pleading and evidence of the defendants not only confusing but also evasive of the main issue on the land in dispute. Clearly in the statement of claim and survey plan the land is entirely at Idimu, not at Ipaja. However, held the learned judge, the confusion introduced by defendant had not by any means dampened the identity of the land in dispute. In one breath the defendant submitted his grandfather leased the land from one Akinogun, and in another that

Akinogun and their grandfathers were friends and that they co-founded the land. At the end of his judgment learned trial judge found merit with plaintiffs' case and had nothing to believe in defendant's case. He found the plaintiffs' family had been exercising maximum uninterrupted possession and right over the land in dispute and that defendant encroached on it in 1990 - 1991. He gave judgment for the plaintiffs.

On appeal, Court of Appeal had no reason to disturb the verdict of trial court and dismissed the appeal. Thus the appeal to this Court.

Before this Court the appellants main issues are that the respondents never proved that Ogunbunmi, daughter of Ogunbuwa, was married to Aina Olaofe, that Aina Olaofe and his wife Ogunbunmi settled on the land and that the two exercised maximum right of ownership on the land. This is the first issue. The second issue is whether the failure of proof aforementioned has not affected plaintiffs' case. The third issue is whether S.146 Evidence Act would not avail appellants because plaintiffs admitted the defendants were on the land.

What the appellants seem to demand by the first issue is proof of a marriage, which produced issues some two hundred or more years ago. Are they demanding Marriage Register for that time or are they demanding witnesses to be called for that marriage? To my mind, this is a departure from the big issue of who first settled the land and has for centuries been in effective control and possession of the land. These are matters not in issue at trial in any serious manner. There is no lacuna created by failure to prove marriage in view of the overwhelming evidence before the Court.

The evidence of the appellant's presence on the land is not that of possession, but clearly of encroachment, which is the subject matter of the suit leading to this appeal. The appellants' presence on the disputed land was noticed in between 1990 and 1991, very recently indeed. For respondents to admit they noticed the encroachment is certainly not admission of possession to favour the appellant.

In a long line of decisions by this Court, it was settled that clear findings of facts by trial court should not be disturbed by the appellate court. If the findings are supported by evidence and are not in conflict with any law on admissible evidence, and they are not perverse or amount to a miscarriage of justice, the appellate court will give clear approval to the findings See *U.A.C Nigeria Ltd. Vs Fashevitan (1998) 11 NWLR (Pt 573) 185, 186, 187*; *Vander Puye V Gbadebo (1998) 3 NWLR (pt541) 279).*

There is no merit in this appeal and I dismiss it with ₦10.000.00 costs to respondents.

Judgment delivered by
Akintola Olufemi Ejiwunmi JSC

I have had the advantage of reading before now the draft of the judgment just delivered by my learned brother, Belgore. JSC. I agree entirely with his reasons for dismissing the appeal, it is also dismissed by me with ₦10,000.00 costs to the Respondents

Judgment delivered by
Ignatius Chukwudi Pats-Acholonu, JSC

I agree. I have nothing more to add. It is a straightforward case.

Judgment delivered by
Aloma Miriam Mukhtar, JSC

I have had the opportunity of reading in advance the lead judgment delivered by my learned brother Belgore, J.S.C., and I am in full agreement with the reasoning and conclusion reached, but would like to add the following by way of emphasis. The reliefs sought by the plaintiffs (who are now respondents in this appeal) in the High Court of Lagos State are as follows: -

"(a) Declaration that the plaintiffs are the persons entitled to the grant of a statutory Right of Occupancy in respect of all that parcel of land at Okunola Village and Isheri-Idimu in the Ikeja now Alimosho Local Government Area of Lagos State which parcel of land is shown on plan NO. AD/LA/136 dated 24th day of November 1993.

(b) A sum of Two Hundred Naira (₦200.00) as damages for trespass from the defendant by himself, his servants, agents and/or privies.

(c) An order of perpetual injunction restraining the defendant by himself, his servants, agent and/or privies from further acts of trespass on the plaintiffs' land described in paragraph 21 (a) above."

The defendants in their amended Statement of Defence counter-claimed as follows: -

"(a) Declaration that the Jonathan Akinola family are entitled to the statutory Right of Occupancy in respect of all that parcel of land shown in the plan referred to in paragraphs 5 and 18 of the Statement of Defence herein. The said plan shall be made available hereafter.

(b) An order of perpetual injunction restraining the plaintiffs either by themselves, servants, agents or privies from further trespassing on the parcel of land belonging to the Jonathan Akinola family which is shown in the plan referred to above and which would be made available hereafter.

(c) Damages in the sum of ₦500,000.00 for trespass from the plaintiffs for unlawfully entering into the defendants' family land and breaking the fence erected on the said parcel of land by the defendants."

The learned trial judge evaluated the evidence adduced, considered the addresses of learned counsel and found for the plaintiffs as follows: -

"1. The plaintiffs are hereby declared to be the persons entitled to the grant of a Statutory Right of Occupancy in respect of all that parcel or piece of land at Okunola Village and Isheri Idimu in the Ikeja now Alimosho Local Government Area of Lagos State which parcel of land is shown on Plan No AD/LA/136/93 dated the 24th day of November1993.

2. …….

Dissatisfied with the judgment the defendants appealed to the Court of Appeal. The appeal was dismissed, and they have now appealed to this court. Briefs of argument were exchanged by learned counsel, and these were adopted at the hearing of the appeal. Three issues for determination were raised in the appellants' brief of argument, and they are:-

1. Whether the failure of the respondents to lead evidence on paragraphs 7, 8, 9 of the 3rd amended statement of claim did not create a serious lacuna in the case of the respondents.

2. Whether the lacuna renders the traditional history of the Respondents inconclusive.

4. Whether the presumption of ownership under Section 146 of the Evidence Act enure in favour of the appellants whose possession of the land in dispute was admitted by the plaintiffs/respondents.

The gravamen of the appellants grouse revolves around a very slim point, which in my own candid opinion is not germane to the just determination of the whole case. I will first reproduce the said paragraphs 7, 8, 9 of the 3rd amended statement of claim hereunder. They read: -

"7. When Ogunbunmi became an adult she was given in marriage to one Aina Olaofe of Ikotun.

8. After the marriage Aina Olaofe came to settle at Idimu and was given an absolute grant of the land in dispute in consequence of the marriage with a view to settle the newly wedded couple.

9. Thereafter Aina Olaofe and Ogunbunmi began to exercise effective and maximum rights of ownership on the said land as Ogunbuwa exercised before them".

To appreciate the merit or otherwise of the discussion on the first and second issues raised and reproduced above, I think it is pertinent that I continue with the pleadings, which are: -

"10. Both Aina Olaofe and Ogunbunmi had 5 issues, these are: Fasenro, Bakare, Garuba, Sanni, (sic) Audu Bala and Basesomo all of who succeeded to the land in dispute after the dead of both Olaofe/Ogunbunmi.

11. Both Audu Bola and Basesomo died intestate without issues in consequence the land in dispute devolved on the children of Fasenro, Bakare Garuba and Sanni as a unit as the land was never at any time partitioned.

12. The plaintiffs herein named are representatives of the grand children of the Fasenro Sanni and Bakare Garuba branches of Olaofe/Ogunbunmi family."

In his evidence in support of the averments P.W. 2 gave the following testimony: -

"The land belongs to our ancestors. His name is Ogunbuwa. He came from Ile-Ife. He settled at Idimu. He came from Ile-Ife about 250 years. Ogunbuwa was a former hunter and palm wine tapper. He also digs well for water ... When he was coming from Ile-Ife he came with Sango, Egungun, Moremi and Oro. He was a palm wine tappers (sic) and palm fruits turner. Ogunbuwa had one child - female. Her name is Ogunbunmi, Ogunbunmi had five children. They are Bakare Garuba Fasinro Sanni Adubola and Basesomo. They had children while two have none. Adubuwa and Basesomo had no issue. The land was not partitioned. I am a son of Bakare Garuba. The first plaintiff is also a son of Bakare."

Now, having stated that they have proved their pleadings, the pertinent question to ask at this point is, what are the facts to establish in a case for declaration of title to land, as in the instant case. It is evident from the pleadings and supporting evidence that the plaintiffs' case is based on traditional history. The law is settled that one of the five ways to claim title to land is by traditional history, which must be proved with cogent and satisfactory evidence. See *Onibudo v. Akibu (1982) 7 S.C. 60, Ayoola v. Adebayo (1969) 1 All NLR 1,* and *Efetiroroie v. Okpalefe (1991) 5NWLRpartl93 page 517.*

In a bid to succeed in their claim the plaintiffs have adduced the above evidence of traditional history which was not challenged by the defendants. It is instructive to note that with the above evidence the plaintiffs/respondents established their case to warrant the court's finding in their favour, for the elements of proving traditional history in a case for declaration of title to land have been met. The issue of not proving the existence of the marriage averred in the above averments is not material to the proof of the case, and is a non-issue as far as the traditional history is concerned. The appellants' counsel made heavy weather of the absence of the evidence in the lower court. It is not every fact pleaded that a party must lead evidence on. The most important requirement is for a plaintiff to adduce evidence in support of the central issue, and issues joined.

This aspect of the case was reasoned out well by the lower court, which encapsuled it thus: -

> "It was not the case of the defendants that they were claiming the land in dispute based on the marriage between Aina Olaofe and Ogunbunmi, the only daughter of Ogunbuwa. Therefore the fact that the plaintiffs did not call evidence as to the marriage between Olaofe and Ogunbunmi would not alter the fact that the land being claimed in this case was the one that devolved on the plaintiffs as the descendants of Ogunbuwa through Ogunbunmi. This is not a case where there was a break in the transmission of interest arising from failure to prove crucial facts pleaded."

I fully indorse the above. Learned counsel's over flogging of this issue is tantamount to making a mountain out of a mole hill. This appeal is against concurrent findings of facts, which this court will not ordinarily disturb, unless they are wrong, perverse and not supported with credible evidence, and miscarriage of justice has been occasioned. See *Patrick Ogbu & Ors. V. Fidelis Ani (1994) 7 NWLR part 355 page 128, Coker v. Oguntola 1985 2 NWLR part 5 page 87,* and *Lawal v Daudu (1972) 1 ANLR page 707.*

That is not the case in the instant appeal, as I fail to see that there is any miscarriage of justice. In this vein, I also find the appeal to be devoid of any merit, and dismiss it in its entirety. I abide by the consequential orders made in the lead judgment.

Judgment delivered by
Ikechi Francis Ogbuagu, JSC

I have had the advantage of reading before now, the Judgment of my learned brother, Belgore. JSC. I agree with him that there is no merit in this appeal. However, by way of emphasis, I will make a few contributions.

It is surprising to me, that the Appellants, instead of facing squarely and dealing with the vital or crucial issue of traditional history in respect of the land in dispute which the plaintiffs/respondents, clearly pleaded and gave in evidence, have laboured albeit, unnecessarily and dissipated avoidable energy, on issues relating to the marriage of Ogunbunmi to Aina Olaofe. I have no doubt, that because of the stance of the Appellants in their pleadings and evidence, at the trial court, that was why, the learned trial Judge, stated at page 443 of the Records, inter alia, as follows:

> "It seems to me that the issues raised herein are very simple and straight forward. But the Defendants had introduced a Counter-Claim and long winding monotonous pieces of evidence principally to confuse the entire case. …."

He continued, after posing the question as to what are/were the issues in this case, inter alia, as follows.

> "... In effect the cardinal and radical issue here is who has a better title - the plaintiffs or defendants? ..."

In respect of the locality or identity of the land in dispute, the learned trial Judge, at page 444 of the Records, had these to say, inter alia:

> "... Fortunately the plaintiffs not only produced Exhibit P1, but also called P.W.1 the Surveyor as a witness. On the other hand - the defendants, in spite of the numerous witnesses called did not tender a survey plan... <u>In addition parties themselves know the land in dispute</u>".

(The underlining mine)

Of course and this is settled, where there is no difficulty in identifying the land, a declaration, may be made without it being based on a plan. See *Etiko v. Aroyewun (1959) 4 FSC 129; Ajibade Garba v. Abu Akacha (1966) NMLR 62; Arabe v. Asanlu (1980) 5-7S.C. 78* and *Atolagbe v Shorun (1985) 1 NWLR (Pt.2) 360,* (1985) 4 S.C. 254 at 275 just to mention but a few.

In fact, it is long established that where a party to a land dispute, had produced and tendered the survey plan showing, the area he is claiming with certainty and ascertainable boundaries, that party, need not call a Surveyor to testify before the trial court, can attach credibility to such a survey plan - See *Alhaji Elias v. Chief Timothy Omobare (1982) 5 S.C. 25 at 38 - 39, 45-46.* The plan can be tendered by consent. See *Omorogie & ors. v. Idugienwanye* & ors *(1985)* 2 *NWLR (Pt.5) 41* at 60 and *Chief Awote & ors. v. Alhaji Owodunmi & anor (1987) 2 NWLR (Pt.57)* 366. In other words, a plan, is not a *sine qua non*, but some descriptions are necessary, to make a disputed land ascertainable. See *Sokpui II v. Agbozo III 13 WACA 241 at 242. Odesanya v. Ewedemi (1962) 1 All NLR 320 at 321: Ayoola v. Ogunjimi (1964) 1 ANLR 188 and Awere v. Losoja (1975) NMLR 100.*

It must be borne in mind always and this is settled, that where a piece of land in dispute, is not unascertainable as for instance, where, all the parties, are agreed as to its area and location or boundaries on the ground, it is not even necessary for them to have filed a plan. See *Kwadzo v. Adjei (1944) 10 WACA* 274: *Epi v. Aigbedion (1972) 10 S.C.* 53: Akpaqbue *v. Ogu (1976) 6 S. C.* 63; *Ezeudu v. Obi*agwu *(1986) 2 NWLR (Pt.2) 208; Maberi v. Chief Alade & ors. (1987) 4 S.C. 184 at 192 (1987) 1 NSCC Vol.18 (Pt.1) 514* and Eze *Okeke & ors. v. Uga & ors. (1962) 1 ANLR 482 at 484.*

As found by the learned trial Judge, the parties, know the land in dispute. It is now firmly established that where the identity of the land in dispute, was/is known to the parties and not in dispute, no plan was/is necessary. The absence of a plan consequently, will not be fatal to the plaintiff's claim if proper description of the land is available in the proceedings. See *Atolagbe v. Shorun* (supra).

It needs be stressed and this is also settled, that the mere fact, that the parties give the land in dispute, different names, is immaterial. See *Alhaji Aromire & ors. v. Awoyemi (1972) 2 S.C. 1 at 12; (1972) 1 ANLR (Pt. 1) 101 at 113 and Makanjuola & anor. v. Chief Balogun (1989) 5 SCNJ. 42 at 50.*

Now, more importantly, the learned trial Judge found as a fact, that the evidence of traditional history given by the plaintiffs/respondents was more probable. He rejected the evidence of the traditional history given by the defendants/appellants as incredible and therefore, worthless. At page 440 of the Records, he stated that under cross-examination, the 2nd defendant testified that he did not know who brought Mustafa Okunola unto the land in dispute. This surely, was contrary to the evidence of the D.W.1.

Again of importance, is that Exhibit 4 was tendered by the plaintiffs/respondents and by the D.W.3. This exhibit shows that the father of D.W.3 was paying rent of 10 (ten) shillings to Bakare.

Also of importance, is that when the learned trial Judge dealt with the veracity of the evidence of the witnesses before him, he found as a fact and held,

(a) that the 2nd plaintiff/respondent "strikes me as a witness of truth" That the there is preponderance of evidence on his side. That on the other hand, the piece of evidence is not only brief, succinct, clear and that it is also probable that defendants are not ‘worthy of belief'.

(b) that when he D.W.1 who he said had had a grouse with the 2nd plaintiff/respondent) was confronted with Exhibit 4, he could offer no answer.

(c) that the 2nd defendant in her evidence in chief, said "my grandfather put Okunola into the village". But that under cross-examination, she changed gear and said "I do not know who brought Mustafa Okunola unto the land".

(d) that this was not all. That the defendants tendered Exhibit P10 the proceedings of a case in 1912 between Bakare Garuba (the father of the present plaintiff) and Okunola Oloye and Adenike. That Okunola Oloye at page 2 of Exhibit P10 testified as follows:

> "I got land from the plaintiff. I got none (sic) (some) about farming 8 farming reason (sic) (season) ago" (sic).

At pages 444 and 445 of the Records, said he, inter alia: -

> "... They (meaning the defendants) gave a long winding history which tends to confuse them. To my mind they do not seem to know what the claims are. Their pieces of evidence do not provide an answer to the plaintiffs' claims".

At page 446 of the Records, the learned trial Judge stated, inter alia, as follows:

> ".... find that the evidence of P.W.1 and 2nd plaintiffs is heavier not by the number of witnesses called by each party. I find that the pieces of evidence adduced for and on behalf of the plaintiffs has more probative value, I accept them".

He referred to the effect of conflict in traditional evidence and stated thus, inter alia:

"In this case there is evidence from 2nd plaintiff that the part of the plaintiffs' land was acquired by the Government. In Exhibit D4 the Plaintiff testified.

"I know F.M.W. & H. in 1976 the Federal Government acquired the land".

It is my finding that the plaintiffs have been exercising maximum acts of possession on the land in dispute. I am not unmindful of the evidence of the defendants that they have been in possession. The law is clear. Where two persons claim to be in possession of a piece of land at the same time the law ascribes possession to one with better title. There can be no such thing as concurrent possession by two persons claiming adversely to each other. The law ascribes possession to one of them with better title. See the case of (sic) Aromire v. Awoyemi (1972) 1 All NLR page 101 at P - 112; *Mogaji v. Cadbury (Nig.) Ltd., (1985) Pt. 7 P.393; Ogunfolu & anor v. Adegbite (sic) (1985) NWLR Pt. P 549".*

Of course, I cannot fault these findings. This is because, it is trite law. Indeed, the court below at page 523 of the Records, stated rightly or correctly in my respectful view, inter alia, as follows;

"In the above passage, the trial judge not only found that the evidence of traditional history called by the plaintiffs was the more probable, he also rejected the evidence of traditional history called by the defendants as incredible and therefore worthless. The result is that if the evidence called by each of the parties was put on an imaginary scale as stated in *A.R. Mogaji & Ors v Madam Rabiatu Odofin (1978) 4 S.C. 91 @ 94,* the scale would inevitable tilt in favour of the plaintiffs. When evidence is rejected as incredible it will have no weight at all".

I cannot agree more. I will however, add and this is also settled, that where a court of trial, unequivocally evaluates the evidence and appraises the facts (as was done in the instant case leading to this appeal), it is not the business of a Court of Appeal, to substitute its own views for that of the trial court. See *Slac Truwasegun & anor. (1973) 9 & 10 S.C.* 7; (1973) 3 ECSLR 1176; *Arowojobe v. Esho & ors. (1975) 4 WSCA* 83; *Chief Woluchem v. Chief Gudi & ors. (1981) 5* S.C. 297 cited with approval in Ibanga & ors *v Usanga & ors (1982) 5 S.C. 103 @ 132* and *Okagbue v. Romaine (1982) 5* S.C. *130, 133* (5) *150- 158.*

It is not the business of a Court of Appeal to substitute its own views for the views of the trial court which is in a much better position to access the credibility of all those who testified before it. See *Egri v. Uperi (1974) (1) NMLR 22.* After all, and this is also settled, the duty of appraising evidence given at a trial, is pre-eminently, that of a trial court, see *Ogundulu & ors v. Chief Philips & ors. (1973) 2 S.C. 71* at 80.

This is why it is firmly settled, that where an appeal, turns on a question of fact (as in the instant case), the presumption, is that the findings of the trial court, are right until rebutted by the Appellant. See *Okoye v. Ejiofo (1934) 2 WACA 130; Akpandja v. Egblomesse (1939) 5 WACA 10, Akinloye v. Eyiyola (1968) NMLR 92; Kponuglo. v. Kodedja 2 WACA 24* P.C. and *Fatunmise v. Omishore (1976)* 6 *U.I.L.R.* (University of Ife Law Report) Pt. II 236; (1964) NMLR 123.

The court below, at page 524 of the Records, further held and rightly in my view that the trial judge found the evidence of traditional history given for the defendants/appellants incredible. That there was therefore, no longer a conflict, which needed to be resolved by reference to facts in recent times. That the undoing of the defendants/appellants' case was that they had called as witnesses, persons whose evidence was found to be incredible by the trial judge. It concludes thus:

"I have not myself seen these witnesses, and it is ordinarily not the business of the appellate court to appraise and re-evaluate evidence when the court of trial has previously done so. See *Akinloye & Anor. v. Eyiyola & ors. (1968) N.M.L.R. 92 at 95; Chief Woluchem & ors. v. Chief S. Gudi (1981) 5 S.C. 291 at* 326. This is the more so in the case where a piece of evidence has been rejected by the trial court as incredible".

At page 525 of the Records, the learned Justice concluded in these words:

"The defendants/appellants have failed to show why this court must interfere with the findings of fact and the conclusion reached on the evidence by the court of trial. It is not for me to say in this court that the court of trial was wrong to have believed the evidence of the plaintiffs while disbelieving that of the defendants. That is entirely a matter within the competence of the court of trial".

I agree and I endorse with respect, the above pronouncement.

I have deliberately, gone this far, in order to show or demonstrate, with respect, the uselessness and of lack of substance, of this appeal. As I noted earlier in this Judgment, the court below had stated that it was not the case of the defendants/appellants, that they were claiming the land in dispute, based on the marriage between Aina Olaofe and Ogunbunmi, - the only daughter of Ogunbuwa. Therefore, that the fact that the plaintiffs/respondents, did not call evidence as to the said marriage, would not alter the fact that the land in dispute, was the one that devolved on the plaintiffs/respondents as the descendants of Ogunbuwa through the said Ogunbunmi. That this was not a case where there was a break in the transmission of interest arising from the failure to prove crucial facts pleaded. Once again, I agree.

There is again, the fact that this appeal relates to the concurrent findings of two lower courts and the attitude of this court as a matter of policy**,** is now firmly established - i.e. not to disturb/interfere. See *Dibiamaka v. Osakwe (1989) 3 NWLR*

(Pt.107) 101 (q) *110, (1989) 5 SCNJ 30* and *Animashaun v. Olojo (1990) 6 NWLR (Pt.154) 111* (a) *121- 122, (1990) 10 SCNJ. 43* and many others

It is from the foregoing and the fuller judgment of my learned brother, Belgore, JSC, that I too, dismiss the appeal, affirm the decision of the court below affirming that of the trial court and I abide by the consequential order in respect of costs.

Counsel

P.O. Jimoh Lasisi. (SAN)	.....	For the Appellants
P.E. Eshurhe, Esqr *with him* Emmanuel Ejiofor Taiwo Adedeji	.....	For the Respondents