In the Supreme Court of Nigeria

On Friday, the 8th day of June 2012

Before Their Lordships

Aloma Mariam Mukhtar	…..	Justice, Supreme Court
Francis Fedode Tabai	…..	Justice, Supreme Court
John Afolabi Fabiyi	…..	Justice, Supreme Court
Nwali Sylvester Ngwuta	…..	Justice, Supreme Court
Olukayode Ariwoola	…..	Justice, Supreme Court

SC. 159/2004

Between

Purification Technique Nig. Ltd Chief Lateef Olayinka Ado Alhaji Saminu Saliu Alhaji Shamusideen Abu *(For themselves and on behalf of the Ado Chieftaincy Family, joined by order of Court dated 9th May, 1994)*	…..	Appellants

And

Rufai Jubril Sule Ramonu Sunmola Oseni Alhaji Bashiru Salami Agbaje Oba Sunday Adelakun *((4th & 5th Respondents substituted for Kehinde Lawal Emiabata and Olaywola Alli, by order of this Honourable Court made on 6th July, 2009) for themselves and on behalf of the Odan Parapo Familv)* Lt. Col. M. Muhammed Mrs. Adesuwa Balogun Mrs. Mabel Omoze Lt. E. Seide Sgt. J. Osagiede	……	Respondents

Judgment of the Court

Delivered by

Nwali Sylvester Ngwuta. JSC

In the Writ of Summons issued at the High Court of Lagos State in the Ikeja Judicial Division on 29th day of February 1992, the 1st appellant was the plaintiff who claimed against the 1st - 9th defendants (Respondents) as follows:

"(a) A damage for trespass by the defendants jointly and severally to all the buildings and structure erected on a twenty (20) acres land and premises lying being and situate at kilometer 15 along Badagry Expressway, Lagos which is better defined in the portion edged Red in Plan No ROC/LA1/90 of 15/6/90 drawn by R. Oluwole Coker Licensed Surveyor, a copy of which (sic) delivered herewith.

(b) An order for the ejectment of the defendants, their servants, agents or any person claiming transfer under them, from the land in dispute.

(c) An order of perpetual injunction restricting the defendants, whether by themselves, their servants, agents or howsoever from committing or continuing to commence (sic) if (sic) further acts of trespass on the land in dispute, whether by way of entry thereupon or by sale or disposition of any interest therein."

(See page 2 of the record).

The 2nd - 4th plaintiffs were joined by order of the trial Court as co-plaintiffs. Pleadings were filed and exchanged.

In addition to their Statement of Defence, the 2nd - 4th defendant's counter-claimed against the plaintiffs jointly and severally as follows:

"(i) A declaration that the alienation, transfer or lease of the land in dispute in Plan No ROC/LD1/90 is null and void and of no effect.

(ii) ₦250,000.00 (Two hundred and fifty thousand naira) from 22nd December 1986 until the plaintiff vacates the said land as damage for trespass.

(iii) An order directing the 2nd - 5th plaintiffs to render account of rents or monies collected and building of the 1st plaintiff lying and being at kilometre 15 Badagry Express Road, shown on the portion of the Survey Plan No ROC/LA1/90 drawn by licensed Surveyor R. Oluwole Coker.

(iv) An order of injunction restraining the 5th - 11th defendants jointly and severally by themselves, their agents, servants, and privies or assigns from committing further acts of trespass on the land shown on Plan No AB1381."

(See pages 3-4 of the record).

In its judgment, the trial Court held that the particulars of the ₦100,000.00 claimed as general and special damages in the amended statement of claim were not pleaded or proved. The Court held under general damages the plaintiffs were "entitled to something" and awarded the sum of ₦l0,000.00 as general damages in favour of the 1st plaintiff against the defendants jointly. The Court also made an award of ₦10,000.00 in favour of the 2nd - 4th plaintiffs jointly against the defendants.

(See page 273 of the record).

On the counter-claim, the trial Court held, inter alia:

> "Having dismissed that claim I believe all the reliefs built upon it collapsed and they are found not tenable. All the reliefs of the defendants as contained in their counter-claim are hereby dismissed. That is the order of this Court."

(See page 273 of the record).

Aggrieved by the judgment, the 1st - 3rd and 6th - 9th defendants appealed to the Court of Appeal Lagos Division. The 4th defendant was also aggrieved and he filed his notice and grounds of appeal. In its judgment delivered on 20th May 2004, the lower Court concluded thus:

> "After careful consideration of the lone issue in my opinion, the 1st - 3rd, 6th - 9th and 4th Appellants' appeal should succeed on the following grounds, namely:
>
> 1. Suit No LD/1213/76 relied upon by the learned trial Judge as confirmation of the title of the plaintiffs/respondents over the land in dispute has been interpreted by the Court of Appeal in Suit No CA/L/122/90 (Exhibit 7) not to be binding on the Odan Parapo family.
>
> 2. Suit No CA/L/122/90 is a subsisting judgment which has not been upturned by a higher Court and the judgment being a judgment of a superior court of record is binding on the learned trial Judge.
>
> In the final result I am of the firm view that the appeal is meritorious and ought to be allowed. I therefore allow it. I hereby set aside the judgment of Longe (J), delivered on 16th December, 1998. However, I hereby make order dismissing plaintiffs'/respondents' claim against the 1st - 3rd, 6th - 9th appellants and enter judgment upon the counter- claim of the 4th defendant's appellant. I assess costs of ₦5,000.00 in favour of each set of the appellants against the respondents."

(See pages 525-526 of the record).

The 1st - 4th plaintiffs (now appellants) were not satisfied with the judgment of the lower Court and they appealed to this Court on a total of 13 grounds. In accordance with the rule of this Court, learned Counsel for the parties filed and exchanged briefs of argument.

In his 2nd amended brief of argument, learned Counsel for the appellants distilled five issues for determination:

> "1. Whether the lower Court was right in their interpretation of Section 12(2) of the Limitation Laws of Lagos State Cap 67 and that the judgment in Suit No LD/1213/76 is statute barred and could not be relied upon by the appellants as a means of proving ownership of the land in dispute.

(Ground 6).

2. Whether it was proper for the Court of Appeal to review and evaluate evidence of traditional history of the 2nd - 4th appellants and the 1st - 4th respondents when the learned trial Judge claimed to do so, if so, whether they properly evaluated same when they found for the respondents and against the appellants.

   (Grounds 3.04 and 3.05).

3. Whether the Court of Appeal was right when they found and held that the Odan Parapo family (4th - 5th respondents' counter-claimants) were able to establish their counter-claim.

   (Grounds 3.07, 3.09).

4. Whether the Court of Appeal was right to grant a declaration that the alienation transfer or lease of the land covered by Plan ROC/LA1/90 is null and void and having found so whether they can grant the order of paying rent to the 4th - 5th Respondents.

   (Grounds 3.10 and 3.11).

5. Whether Suit No CA/L/1221/90 (Exhibit 7) has interpreted that the counter-claim in Suit No LD/1213/76 (Exhibit 1) is not binding on the Odan Parapo family, and that, that judgment on appeal as Suit No FCA/L/95/78 (Exhibit 2) and SC.61/80 (Exhibit 3) does not constitute *Res Judicata* between Ado family (2nd - 4th Appellants) and Odan Parapo family (1st - 3rd and 4th - 5th Respondents.

   (Grounds 3.01; 3.02 and 3.03).

In his 2nd amended brief, learned Counsel for 1st-3rd and 6th-10th Respondents pointed out that the appellants did not formulate issue(s) from grounds 3.08, 3.12 and 3.14 of the grounds of appeal. He argued that the said grounds are abandoned and relying on *Madam Akon Iyoho v E.P.E. Effiong & Anor (2007) 4 SC (Part 111) page 90 at 105*, he urged the Court to strike out the grounds from which no issues were framed.

Learned Counsel also raised preliminary objection to grounds 3.06 and 3.09 on the ground that the grounds did not arise from the decision of the lower Court. He submitted the following four issues for the Court to resolve:

1. Whether the learned Justices of the Court of Appeal were right when that (sic) held that Suit No LD/1213/76 and the counter-claim therein is not binding in (sic) Odan Parapo family.

   (Ground 3.01 and 3.02).

2. Was the lower Court right in upholding Exhibit 7 and whether the determination (in Exhibit 7) of which party is bound by the judgment in LD/1213/76 amounted to reopening of issue decided in the Suit.
   (Ground 3.03).

3. Whether the lower Court was right when it held that Section 12 (2) Limitation Law of Lagos State applies in the instant case to bar the plaintiffs/appellants from predicating the present Suit on Suit No LD/1213/76 decided more than twenty years ago before the present Suit was filed in 1992.

   (Ground 3.06).

4. Whether the lower Court, having held that Exhibits 1, 2 and 3 do not avail the appellants, was legally justified in proceeding to consider and determine the case on the basis of the other method of proof of title (traditional history) relied upon by the appellants and whether the decision that the respondents and not the appellants, duly pleaded and proved their traditional history and are thus entitled to judgment as per the counter-claim of the 4th and 5th respondents is supported by evidence on record.

   (Grounds 3.04; 3.05; 3.07 and 3.09)."

Learned Counsel for 4th and 5th respondents filed a 3rd amended brief of argument in which he formulated the following four issues for the Court to resolve:

"1. Whether the Court of Appeal was right when they held that the judgment in Suit No LO/1213/76 is not binding on the 4th defendant's family (Odan Parapo family).

(Grounds 1 and 2 of the Notice of Appeal).

2. Whether the Court of Appeal was right when they held that this case filed and predicated or founded upon the judgment in Suit No LD/1213/76 delivered about 20 years is statute-barred by Section 12 (2) of the Limitation Law of Lagos State.

   (Ground 6 of the Notice of Appeal).

3. Whether the Court of Appeal was wrong when they held that the failure of the plaintiffs (now appellants) to plead the lineages of Ado and lead credible, cogent and conclusive oral evidence as to how the land devolved through the lineages to the 2nd, 3rd and 4th plaintiffs is quite fatal to the attempt to establish title by traditional history.

   (Ground 5 of the Notice of Appeal).

4. Whether the Court of Appeal was right when they held that the 4th defendant family (Odan Parapo family) proved their ownership of the land therefore entitled to the reliefs sought in their counter-claim.

   (Grounds 4, 7, 10 and 11 of the Notice of Appeal)."

Learned Counsel for the Appellants filed replies to the briefs filed on behalf of 1st - 3rd, 6th - 10th respondents and 4th-5th respondents.

At this point, I will dispose of the preliminary objection raised by learned Counsel for the 1st - 3rd, 6th - 10th respondents. He submitted that the learned Counsel for the appellants did not frame any issue from grounds 8, 12 or 14. He argued further that grounds 6 and 9 did not arise from the decision of the Court below.

I have considered the preliminary objection and the reply filed by learned Counsel for the appellants. I will deal with grounds 6 and 9 first. They are hereunder reproduced:

"6. The learned Justices of Appeal erred in law when they held that the reliance on Suit No LD/1213/76 by the 2nd-4th plaintiffs as proof of ownership amounts to enforcement of judgment, and is therefore caught by the Statute of Limitation of action and cannot be relied upon by 2nd-4th plaintiffs as evidence of ownership against the 4th Respondent/Defendant/Counter Claimant's family and the 1st-3rd, 6th-9th defendants/respondents.

9. The learned trial Justices of the Court of Appeal finding that the 4th Appellant and 1st - 3rd, 6th - 9th appellants established their counter-claim is perverse."

I have read the judgment of the lower Court. Appellant's ground 6 is based on Suit No LD/121.3/76. Both parties to the appeal in the Court below raised issues on Suit No LD/1213/76. See pages 514 to 518 of the record. The issues so raised were resolved by the Court below. See page 525 of the record.

Ground 9 relates to issue No 6 in the 4th appellant's brief before the lower Court. The 4th appellant raised nine issues which were condensed into a single issue similar to that of the 1st - 3rd, 6th - 9th appellants. The resolution of the single issue in the appellants' favour gave rise to ground 9 of the grounds of appeal.

The preliminary objection against the hearing of the appeal on issues drawn from grounds 6 and 9 in the appellants' notice of appeal is without merit and is hereby over-ruled.

Learned Counsel for the appellants maintained a studied silence on the argument that he raised no issue or issues from grounds 8, 12 and 14 of the grounds of appeal. Impliedly, learned Counsel conceded the point but he should have made the concession directly in his reply brief. His silence was meant to, and did, convey the false impression that learned Counsel forgot to reply to that part of the preliminary objection.

Grounds 8, 12 and 14 of the appellants' grounds of appeal from which no issue was distilled are deemed abandoned and are hereby struck out. See *Onifade v Olayiwola (1988) 2 NWLR 263 at 270. See also Egbe v Yusuf (1992) 6 NWLR (Part 245) 1; Ogbuinyinya v Okudo (No 2) (1990) 4 NWLR (Part 146) 551.*

Having dealt with the preliminary objection, I intend to sanitise the issues in the briefs. 1st - 3rd, 6th -10th and 4th - 5th Respondents each submitted four issues for the Court to resolve. The issues formulated by the two sets of respondents can be adequately disposed of in the resolution of the appellants' five issues which I adopt in the determination of the appeal.

Arguing issue one in his 2nd amended brief of argument, learned Counsel for the appellants reproduced portions of the judgment of the Court below at pages 519 to 520 as well as paragraphs of the parties' pleadings in the Suit and submitted that there was

no evidence of date on Exhibit 1, the judgment on the Counter-Claim. He referred to paragraph 7 of the appellants' reply in the trial Court and argued that the appellant did not seek to enforce the judgment in LD/1213/76 but merely relied on it as a fact to support their acts of possession and ownership of the disputed land.

He relied on *Nwosu v Udeaja (1990) 1 NWLR (Part 125) 188 at 220, Ikoku v Ekeukwu (1995) 7 NWLR (Part 10) pages 637-654*. He referred to paragraph 16 of the Statement of Claim and evidence led upon same and argued that it was wrong for the Court below to have held that the trial Court misconstrued Section 12 (2) of the Limitation Law of Lagos State Cap 67. Learned Counsel contended that the lower Court erred when it defined the word "enforce" to mean "brought upon".

He argued that even if the lower Court was right in defining the word "enforce" to mean "brought upon", it was wrong to apply the definition to Suit No LD/1213/76. Learned Counsel invited this Court to examine the cause of action and the reliefs set out at pages 285-286 of the record. He said that the appellants did not seek declaration of title since they claimed that the issue of title had been settled in the Counter-Claim LD/1213/76, FCA/L/95/78, SC.61/80.

Referring to the claim in the trial Court, he said that the trespass took place in 1989 and contended it is appropriate for a party who has obtained judgment to go to Court to add something to the judgment. He cited *Ojiako v Ogueze (1962) 1 All NLR 58; Ajuwon v Adeoti (1990) 2 NWLR (Part 132) 221*.

Learned Counsel emphasised that it was wrong for the Court below to hold that the attempt of the appellants to rely on Exhibits 1, 2, and 3 as evidence of ownership of the disputed land amounted to attempt to enforce the judgment in LD/1213/76. He referred to Section12 (2) of the Limitation Law of Lagos State and argued that the provision is intended to bar enforcement of coercive rights in a judgment twelve years previous to the new action.

He argued that only the enforcement of a right in a judgment could be barred under Section 12 (2) of the Limitation Law and not the judgment relied on to prove ownership. He relied on *Archibong v Itu (2004) All FWLR (Part 197) 930 at 962; Adomba v Odiese (1990) 1 NWLR (Part 125) 165; Mobil Oil (Nig) Ltd. v Coker (1975) 3 SC 175; Ojiako v Ogueze (1962) 1 All NLR 58 at 62; Ajuwon v Adeoti (1990) 2 NWLR (Part 132) 271*.

He argued that a judgment does not have a life span; it stands for ever though enforcement of coercive rights therein can be extinguished by Limitation Statute. He cited the case of *Governor of Gongola State v Tukur (1989) 4 NWLR (Part 117) 5*92 in his argument that the right of *res judicata* in favour of the appellants' family in the dismissal of the counter-claim in Suit No LD/1213/76 on appeal to the Court in SC.61/80 is an unenforceable judgment and argued that the purpose for which Exhibit 1 was tendered in evidence by the appellants is not within the contemplation of Section 12 (2) of the Limitation Law of Lagos State. He relied on *Ogunlade v Adeleye (1992) 23 NSCC (Part 111) 196 at 207, Lamb & Schs v Rider (1948) KB 331*. He argued that the Court below was in error to have chosen Exhibit 1 and ignored Exhibits 2 and 3 on the issue of limitation because Exhibit 3 is not statute-barred.

He said that the Court of Appeal was wrong to have reversed the trial Court on the issue of LD/1213/76. He referred to *A-G of Oyo State v Fairlakes Hotels Ltd (1989) 5 NWLR (Part 121) page 255* and urged us to hold that the Court below was wrong in their consideration of Exhibits 1, 2 and 3.

In Issue 2, learned Counsel referred to page 522 of the record wherein the Court below rejected Exhibit 1 as statute-barred and proceeded to review evidence of traditional history and found for the 4^{th} -5^{th} counter-claimants/respondents on their pleading and oral evidence. He contended that the trial Court considered reviewed and evaluated the entire evidence and came to the conclusion that traditional history was not needed to decide the dispute between the parties. He referred to page 270 of the records. He said that the trial Court rightly applied the decision in *Idundun v Okumagba* (*1976) 10 SC 207.*

He argued that the Court below was wrong to have determined the appeal on a method of proof different from the method adopted by the trial Court to resolve the dispute. Learned Counsel argued that the Court below, having disagreed with the trial Court on Exhibit 1, should have sent back the case for the trial Court for retrial. He said there was no basis for the Court below to re-evaluate the findings of fact made by the trial Court. He said that the trial Court relied on evidence before it to arrive at the conclusion that the 1^{st}-4^{th} respondent were privies to the counter-claim in Exhibit 1, stressing the advantage of the learned trial Judge who saw and heard the witnesses testify in Court. He urged the Court to set aside the findings of fact made by the Court below on the traditional history and send back the case for trial de novo.

In issue 3, learned Counsel complained of the preference of the traditional evidence of the 4^{th} - 5^{th} respondents to that of the appellants based upon which the Court below found that the 4^{th}-5^{th} respondents proved a better title in the counter-claim. He argued that a counter-claim is a separate claim and the counter-claimants must rely on the strength of their own case. He referred to the evidence of DW1 and DW2 at pages 220 and 227 of the record and argued that the respondents did not establish "family" within the context of Yoruba Native Law and Custom as those who claim membership of Odan Parapo family do not share a common ancestry.

He relied on *Mogaji v Cadbury Nig Ltd (1985) 2 NWLR (Part 7) 393* for the principle that in case of line of gaps and mysterious linkages or nexus such line of succession will be rejected. He referred to *Chinweze & Anor v Masi & Anor (1989) 1 All NLR 1* and *Eyesan v Sanusi (1984) 4 SC 115* and argued that the 4th- 5th counter-claimants/respondents failed to prove that they have a common ancestor and the Court of Appeal was wrong to have decided in their favour as members of the Odan Parapo family.

In issue four, learned Counsel referred to the counter-claim of the 4th-5th respondents and the decision of the Court below that the transfer or lease of the land in dispute in Plan No ROC/LA1/90 is null and void. He contended that the 4th-5th respondents did not give evidence in support of their claim, adding that the DW1 only recited the pleading that they did not give consent to the transfer or lease whereas the appellants pleaded and gave evidence that the lease was first created in 1976 after which the 1st appellant continued the lease in 1986. He referred to the evidence of DW1 who stated that:

> "I know there are two petrol stations on the land before the case of 10/155/82. The petrol station was very conspicuous."

He referred to page 270 lines 16-23 of the record and said that the trial Court found as a fact that the appellants had been using the land in dispute since 1976 when they leased same to Agip Petrol Station, and that the 1st-4th respondents did not show evidence of protest. He contended that the land is in a conspicuous place on the Badagry Expressway and that the appellants' plea of larches and acquiescence in defence of the claim of the 1st - 5th respondents should avail them. He said the finding of the trial Court was not challenged and is subsisting. He argued that in the circumstances, the Court below should have in its discretion declined the order sought. He relied on *Barclays Bank v Ashiru (1978) 6-7 SC 99 at 131.*

Learned Counsel said that the learned trial Judge found as a fact that the same Odan Parapo family had been challenging the Ado family despite the judgment of the Supreme Court in Exhibit 3 and that the Court of Appeal never considered that a stranger to a deed cannot seek to avoid such document unless it was made for the benefit of the stranger. He relied on *Ordor v Nwosu (1974) 1 All NLR (Part 11) 476.*

He referred to Exhibit 3 in which the Supreme Court decided that the appellants own the land in Plan No 1381 now GF 1150 and argued that the lower Court was in error when it granted the 4th - 5th respondents damages for trespass as they were never in possession of the land in dispute. He said that there was no evidence of proof of account claimed by the 4th - 5th respondents and granted by the lower Court. He urged the Supreme Court to set aside the decision of the Court below and restore the judgment of the trial Court delivered on 16th December, 1998.

In Issue 5, learned Counsel referred to page 270 of the record for the finding of the trial Court that counter-claim in LD/1213/76 confirmed by the Supreme Court, is binding in the Ado and Odan Parapo families. He referred to the judgment of the Court below in CA/L/122/90 that the decision in LD/1213/76 did not bind the Odan Parapo family. He also referred to the decision of the Court of Appeal that those persons cited for contempt in Suit No CA/L/122/90 were not parties to Suit No LD/1213/76.

He argued that the counter-claim in LD/1213/76, JCA/L/95/78 and SC.61/80 was not the same with CA/L/122/80 and the issues are not the same. He argued that the learned trial Judge was right to rely on LD/1213/76 as binding on the 4th - 5th respondents in respect of ownership of the land. He referred to *Onwudinjo v Dimobi (2004) All JWLR (Part 234) 181* and said that the High Court rightly followed the decision of this Court in SC.61/80. He said that the Court below was in error when it decided that Suit No CA/L/122/90 (Exhibit 7) had interpreted Suit No LD/1213/76 and that the counter-claim therein was not binding on members of Odan Parapo family.

He emphasised that the Court below mentioned the 4th respondent but did not refer to 1st-3rd appellants in Exhibit 7 who sued on behalf of the Odan Parapo family in counter-claim in Suit No LD/1213/76. He argued that counter-claim in Suit No LD/1213/76 was brought on behalf of Odan Parapo family and that it is not open to any Court to examine or decide whether certain individuals are bound or not. He pointed out that the original action in Suit No LD/12/13/76 was against named defendants in their individual capacities and that the issue decided in the original suit was not an issue before the trial Court.

He contended that the counter-claim in Suit No LD/1213/76 was not considered in Exhibit 7 nor was it decided that the counter-claim filed by the defendants was not filed for and on behalf of the Odan Parapo family. He submitted that the appellants proved that the land in dispute in LD/1213/76 was the same in the appeal before this Court. He relied on the finding of the trial Court at page 259 lines 13-14 wherein the trial Court found that:

> "It is agreed that the land in Plan No ROC/LA1/90 is the portion of land in AB/1381 drawn by A. B. Apatira."

He said that there was no appeal against the said finding of the trial Court. Learned Counsel emphasised that the Court of Appeal did not, in CA/L/122/90, make any findings on the representation of the named defendants in LD/1213/76 in relation to the counter-claim. He contended that a decision in a main or original suit prosecuted in a personal capacity will not automatically apply to a counter-claim made in a representative capacity.

He referred to and relied on the findings of the trial Court at page 268 lines 20-23, page 269 lines 1-2 of the record that:

> "That the plaintiffs in LD/1213/76 were members of Ado family who are plaintiffs in this case and the defendants were individual members of Odan Parapo, and in the counter-claim made in the case the plaintiffs for themselves and on behalf of Odan Parapo Family."

He urged us to revert to the findings of the trial Court. He urged us to hold that the 1st - 5th respondents are privies in law, blood and estate in the counter-claimants in LD/1213/76 as found by the trial Court. He emphasised that in the counter-claim to the ownership of the land, part of which is now in dispute, the Odan Parapo Family, not named parties, was the claimant to and that the defendants were the Ado Family while the 1st - 5th respondents represented the Odan Parapo Family.

He said that authority or want of authority to represent Odan Parapo Family in Suit No LD/1213/76 is not an issue before this Court and urged the Court not to consider the said issue. He contended that apart from the bare assertion that their family did not authorise them to represent it in LD/1213/76 the 4th-5th respondent did not offer evidence in proof of their assertion. He stated further that the lack of authority is only in respect of the defence to the main claim in LD/1213/76 and did not relate to the counter-claim.

He referred to the second leg of the counter-claim to the effect that the whole land had always been the communal property of Odan Community (or Odan Parapo Family) and urged the Court to hold that the counter-claim was made in a representative capacity. He relied on *Oseni v Dawodu (1994) 4 NWLR (Part 339) 390.*

After pages of unnecessary and valueless repetitions of points already made in the brief, learned Counsel for the appellant urged us to reverse the judgment of the Court below and to restore the judgment of the learned trial Judge.

Dealing with issue one in the 2nd amended brief of argument, learned Counsel for the 1st-3rd, 6th-10th respondents submitted that the lower Court was right when it held that the Court of Appeal in CA/L/122/90 (Exhibit 7) had rendered the judgment in LD/1213/76 (Exhibit 1) inoperative against the respondents' family and that the learned trial Judge erred in failing to follow the decision of a higher Court on the principle of *stare decisis*. He argued that the appellants conceded in their paragraphs 8.08 and 8.09 of their amended brief that CA/L/122/90 (Exhibit 7) rendered the decision in Exhibits 1, 2 and 3, i.e. LD/1213/76, JCA/95/78 and Section 61/80) inoperative.

He disputed the contention of the appellant it is the main claim in *LD/1213/76* that was invalidated by *CA/L/122/90 (Exhibit 7*) and that the counter- claim in *LD/1213/76* was not affected by the decision of the Court of Appeal in *CA/L/122/90*. He said that the reason for the trial Court's decision in favour of the appellants cannot stand in the face of the decision of the Court of Appeal that the decision in *LD/1213/76* as confirmed by this Court in SC.61/80 is not binding on the respondent's family.

He submitted that the counter-claim was dismissed for want of evidence and that there was no decree in favour of the appellants so as to vest them with title to the land. He referred to *Amadi v Oharu (1978) 6-7 SC 217; Orianwo v Okene (2002) 6 SC* (Part 11) 45. Learned Counsel pointed out that the appellants filed committal proceedings against the respondents' family for breaching the judgment in LD/1213/76 and the application granted by Gomez, J was set aside on appeal, to the Court of Appeal as being defective in form and substance as the judgment in *LD/1213/76* did not bind the respondents' family.

Learned Counsel emphasised that Exhibits 1, 2 and 3 (the judgments in the present suit) were the same Exhibits 7, 8 and 9 tendered in the committal proceedings and upon which the lower court set aside the conviction for contempt of Court. He argued that Exhibit 7 in the committal proceedings comprised of the judgment in the main suit and the judgment in the counter-claim all in Suit No LD/1213/76.

It was stressed that if the lower Court saw any finding in the counter-claim against the respondents' family the order of committal would have been affirmed. It was also submitted that in contrast to the submission at paragraph 8.16 of the appellants' brief the use of the term "original action" by the lower Court in Exhibit 7 refers to the entire Suit No LD/1213/76 as the lower Court did not distinguish the main claim from the counter-claim in the Suit. Counsel contended that the term "original action" is not synonymous with the phrase "main action".

He maintained that the lower Court in CA/L/122/90 Exhibit 7 decisively settled the issue of blindness or otherwise of Suit No LD/1213/76 as between Ado family and Odan Parapo family, Counsel argued, that not having appealed against the decision in Exhibit 7, the appellants cannot impugn the said decision. It was argued on behalf of the respondents that appellants in paragraph 8.08 and 8.09 of their brief conceded that the Suit No LD/1213/76 relied on as proof of title by the appellants had, before the commencement of this Suit, been nullified by the Court of Appeal in Exhibit 7.

He said that the counter-claim in LD/1213/76 was not proved and as it stood then the appellants who sued as members of Ado family in Exhibit 1 and the counter-claimants in the suit, who counter-claimed for Odan Parapo family in Exhibit 1 failed to establish any legal right one against the other. This, Counsel argued, means that in subsequent dispute over the land, the parties can lead fresh evidence distinct from Exhibit 1 to sustain their entitlement to the land.

In issue 2, the main point of Counsel's argument is that in Exhibit 7 (the judgment in Suit No CA/L/122/90) the Court of Appeal had decided that Suit No LD/1213/76 was not binding on Odan Parapo family but the trial Court ignored the decision binding on it and arrived at a wrong conclusion. He cited the case of *Abacha v Fawehinmi (2000) 4 SC (Part 11) 95* wherein he said that this Court castigated the Court of Appeal for not following the decision of the Supreme Court in *Labiyi v Ariretiola (1992) 8 NWLR (Part 258) 139.* It was therefore submitted that the decision of lower Court in CA/L/22/90 that Odan Parapo family was not a party to, and *ipso facto*, not bound by the decision in LD/1213/76 cannot amount to reopening or reversing the Supreme Court judgment in SC.61/80 as argued in the 5th issue in the appellants' brief.

In issue 3, learned Counsel argued that an examination of the amended statement of claim filed by the appellants showed that their case rested on two planks - the judgment in LD/1213/76 and traditional history, and that the respondents as defendants, joined issues with the appellants as plaintiffs. He reproduced and relied on, Section 12 (2) of the Limitation Law of Lagos State and the judgment of the lower Court at page 520 of the record. Counsel submitted that the reasoning and conclusion of the lower Court on LD/1213/76 at pages 319-320 is unimpeachable.

In issue 4, learned Counsel contended that where a party pleaded and led evidence on two methods of proof of title to land and the first method failed, the Court has a duty to consider the other method relied on by the party in the evaluation of evidence by the appellant. He relied on *Obinnechie & Ors v Akusobia & Ors (2010) 4-7 SC (Part 11) 178 at 215*. Counsel referred to the respondents' appeal at the lower Court and said that the decision was that the appellants did not prove either of two issues they relied on and therefore the lower Court was right, pursuant to Section 16 of the Court of Appeal Rules, to consider evidence of traditional history, which the Court of Appeal declined to consider.

He relied on *Ibrahim v Ojomo (2004) Vol. II WRN page 1 at 22-23* for conditions for the appellate Court to make findings based on the records of proceedings before it and said that the lower Court followed the said decision in its consideration of traditional history given by the parties. He submitted that the lower Court having considered the evidence of traditional history was right in its decision that the appellants failed to prove their case by the evidence offered on traditional history. He urged the Court to dismiss the appeal.

Dealing with issue one in the 3rd amended brief filed on behalf of the 4th-5th respondents, learned Counsel for the respondent submitted that Odan Parapo family was not a party to Suit No LD/1213/76 (Exhibit 1) which was brought against the defendants in their individual capacities and so the family is not bound by the judgment in the Suit. He relied on *Ezeanya v Okeke (1995) 4 NWLR (Part 388) 142 at 16a; Shittu-Bay & Ors v Lagos Executive Development Board & Ors (1962) 1 All NLR 373; Okukujor v Akwido (2001) SC (Part 11) 80 at 87.* He relied on the Court of Appeal judgment Exhibit 7 in CA/L/122/80, and argued that the judgment was properly construed to mean that the judgment in LD/1213/76 did not bind the Odan Parapo family.

He referred to the alleged concession of the appellants that the original action instituted by Ado family (2nd-4th appellants) was against the named defendants in their individual capacities and justified the decision of the lower Court in Exhibit 7 that Suit No LD/1213/76 was not binding on the Odan Parapo family, adding that the same judgment cannot be relied upon as act of ownership against the said Odan Parapo family.

It was submitted on behalf of the 4th-5th respondents that the counter-claim in LD/1213/76 was not proved and that the dismissal of the counter-claim did not affect the Odan Parapo family as there was accepted evidence that the family did not authorise the counter-claimants to defend Suit No LD/1213/76 on behalf of the said family. Counsel added that the dismissal of the counter-claim in LD/1213/76 is not judgment for the 2nd - 4th appellants (Ado family) who were defendants to the counter-claim and that appellants cannot rely on the dismissal of the counter-claim as proof of ownership of the land in dispute, nor did the appellants plead the dismissal of the counter-claim in the amended statement of claim at pages 80 to 87 of the record.

He relied on *George Okafor & Ors v Eze A. T. Idigo III & Ors (1984) 6 SC 1 at 60.* Learned Counsel argued that since the appellants did not cross-appeal the judgment of the trial Court on the effect of the dismissal of the counter-claim they cannot raise the issue in this appeal. He relied on *Akaluka v Yongo (2002) 2 SC (Part 11) 45 at 74.* He argued that the appellants cannot raise the issue of privies as it is caught by the doctrine of issue estoppels and res judicata by virtue of *CA/L/122/90* (Exhibit 7). He relied on *Oshoboja v Amida (2009) 12 SC (Part 11) 107 at 128.*

In issue 2, it was argued for the 4th-5th respondents that the appellants commenced their action on 27th March 1992 and relied on the judgment in LD/1213/76 Exhibit 1. Counsel submitted that the decision of the Court of Appeal at page 520 lines 13-74 of the record that the case Suit Ni. Ld/1213/76 about 20 years old was barred by Section 12 (2) of the Limitation Law of Lagos State was right. He referred to page 519-520 of the record and relied on the decision of the lower Court that since there was no application for a stay of execution of the judgment in LD/ 1213/76 the same became operative on it's delivery.

Learned Counsel referred to the trial court that the plaintiffs used the judgment in Suit No LD/1213/76 as one of the ways in which they asserted their ownership over the property (page 267-268 of the record) as a clear admission that the plaintiffs founded their Suit upon the judgment delivered 14 years previous to the judgment.

On issue 3, learned Counsel submitted that the lower Court was right when it held that the appellants failed to prove their title by traditional history. He said that the appellants failed to establish the devolution of the land in dispute unto the 2nd-4th plaintiffs and that the gaps so created in the genealogy of the appellants is fatal to the proof by traditional history.

In issue 4, reference was made to the evidence of the 4th defendant DW1 who gave evidence of traditional history of Odan Parapo family and whose evidence Counsel said was not shaken in cross-examination. Counsel said that the evidence of PW1 was supported by documentary evidence in Exhibits 6, 11, 13, 13A, 14 and 15. Counsel contended that the lower Court was in as good a position as the trial Court to draw correct legal inferences from admitted facts from the evidence of traditional history given by the DW1.

Concluding, learned Counsel for the 4th - 5th respondents urged the Court to hold that it is equitable for the appellants (2nd-4th to render account of rent collected and pay over the rents to the Odan Parapo family. He urged the Court to dismiss the appeal and affirm the judgment of the Court of Appeal.

Learned Counsel for the appellants filed replies to the 2nd amended brief of the 1st - 3rd, 6th - 10th respondents as well as to the 3rd amended brief of the 4th-5th respondents. As in the appellants' brief, there are unnecessary repetitions in the replies and these are not helpful in the determination of the appeal.

Once more, I will reproduce issue one in the appellants' brief. The appellants queried:

> "Whether the lower Court was right in their interpretation of Section 12 (2) of the Limitation Laws of Lagos State Cap 67; and, that the judgment in Suit No LD/1213/76 is statute-barred and could not be relied upon by the appellants as a means of proving ownership of the land in dispute."

The issue reproduced above appears to be the focal point in the appeal.

The appellants launched a triangular attack on the judgment of the Court below. The components of the issue are:

1. Interpretation of Section 12 (2) of the Limitation Law of Lagos State.

2. That judgment in LD/1213/76 is statute-barred; and

3. That the judgment could not be relied upon by the appellants as a means of proving ownership of the land in dispute.

I will take the three sub-issues seriatim.

(1) Section 12 (2) of the Limitation Law, Lagos State provides:

"Section 12(2): An action shall not be brought upon a judgment after the expiration of twelve years from the date on which the judgment becomes enforceable."

The lower Court interpreted the Section to mean that:

> "..... time begins to run from the time the judgment becomes enforceable". Suit No LD/1213/76 was delivered on 24/1/78. It becomes enforceable or operative on that date."
>
> See page 250 of the records.

I cannot fault the above interpretation bearing in mind that even though there was an appeal against the judgment, there was no application, and *ipso facto*, no order, to stay its execution.

(2) Judgment in Suit No LD/1213/76 was delivered on 24/1/78. The Writ of Summons was issued on 29th February, 1992 well after the 12 years prescribed in the Limitation Law of Lagos State. At the expiration of twelve years from 24/1/78 when the judgment in LD/1213/76 became enforceable, any action brought upon it is caught, and rendered time-barred, by Section 12 (2) of the Limitation Law of Lagos State. Whether Suit No ID/792/92 from which this appeal originated is "an action brought upon the judgment in Suit No LD/1213/76 and *ipso facto* statute barred by Section 12 (2) of the Limitation Law" will be demonstrated shortly.

(3) It has to be emphasised, My Noble Lords, that a judgment of a Court subsists in perpetuity, notwithstanding any error in law or facts therein, until, and unless, it is set aside or vacated by a Court of competent jurisdiction.

As a matter of commonsense, an action brought upon a judgment is an invocation of the coercive powers of the trial Court to enforce the enforceable orders in the judgment. In other words, the action is intended to enforce specific orders in the judgment. It is not the judgment that is statute-barred. It is an action to enforce the reliefs granted in the judgment that may be statute-barred.

In my humble view, a party invoking the Statute of Limitation is bound to specify the reliefs in the judgment which the suit is seeking to enforce. Without the reliefs granted in the judgment placed side by side with the reliefs sought in the latter suit, it can hardly be said with any degree of certainty that the suit is brought upon the judgment delivered earlier in time. This has not been done in this appeal and the Court cannot reach a decision based on speculation.

But assuming that the reliefs sought and granted in LD/1213/76 are specified in pursuit of the plea that the suit is barred, could it be said that Suit No LD/792/92 is an action brought upon the judgment in LD/1213/76 within the meaning and intendment of Section 12 (2) of the Limitation Law of Lagos State?

I have scrutinised the record of the trial Court. The claim endorsed on the Writ of Summons did not refer, or relate, to Suit No LD/1213/76. The Writ was not amended and even though the Statement of Claim supersedes the Writ, a party predicating his relief on a previous judgment would be expected to indicate the basis of his claim in the Writ. A total of four Statements of Claim and three Amended Statements of Claim were filed in the Suit. Where Suit No LD/1213/76 was mentioned in the Statement of Claim, it was merely pleaded as one of the facts on which the appellants (then plaintiffs) would rely in proof of their claims.

In Suit No ID/792/92 from which the appeal arose, the plaintiffs (now appellants) claimed damages for trespass, an order to eject the defendants from the land in dispute and an order to restrain the defendants from further trespass on the land. There was a counter-claim which the trial Court dismissed and entered judgment in favour of the plaintiffs' claim.

In Suit No LD/1213/76, the claim was for a declaration that the defendants were not members of Ado family and an order to restrain the defendants from interfering with the properties of Ado family. The claims were granted by the trial Court, the judgment of the Court of Appeal affirming the said judgment was affirmed by the Supreme Court. See Exhibits 1, 2 and 3.

In view of the claims and orders granted in Suit No LD/1213/76 and the claims and orders granted in ID/792/92, it cannot be said that the latter Suit was an action brought upon the judgment in the former Suit.

It cannot be said that the Suit is brought upon the judgment in Suit No LD/1213/76 pleaded as a fact and relied on by the appellants any more than it can be said that the Suit is brought upon any of the other facts pleaded and relied on by the appellants. What is barred twelve years after it became enforceable is an action brought upon the judgment. See Section 12 (2) of the Limitation Law (supra).

The judgment itself is not statute-barred and the fact that such judgment was rendered can be pleaded and relied on in a subsequent action notwithstanding the effluxion of time. Though the lower Court correctly interpreted Section 12 (2) of the Limitation Law of Lagos State, the judgment in Suit No LD/1213/76 is not statute-barred.

Though an action brought upon the judgment is statute-barred, the fact that the judgment was given can be pleaded and relied on in a subsequent proceedings. Issue one is resolved in favour of the appellants and against the respondents.

Issue two on the review and evaluation of evidence of traditional history by the lower Court is linked with issue five on the interpretation of the counter-claim in LD/1213/76. I will resolve the two issues together. Exhibit 1 is the judgment of the trial Court in LD/1213/76. Exhibit 2 and Exhibit 3 are the judgments of the Court of Appeal and the Supreme Court, respectively, in the same matter.

At page 269 of its judgment, the trial Court found as follows:

> "... Those who counter-claimed in LD/1213/76 were blood relation of the present defendants (1^{st} - 4^{th}) in this case. On this admission I regard the 1^{st}-4^{th} defendants in this case as being privy in estate to the counter-claimants in LD/1213/76 in at least as far as their claims to ownership of that 12 villages is concerned. See *Nwosu v Udeaja (1990) 1 NWLR (Part 125) at 188 ..., Coker v Sanyaolu (1976) SC 203.* Being related by blood to those members of Odan Parapo who counter-claimed for the family in LD/1213/76 the 1^{st} - 4^{th} defendants cannot be permitted to wish to state their case again on ownership of the land."

At page 522 of the record, the lower Court held inter alia:

> "Exhibit 7 has interpreted the bondliness or otherwise of LD/1213/76 and the counter-claim therein on members of Odan Parapo family. By the doctrine of judicial precedent a different course is not open to the learned trial Judge..."

I agree with the position taken by the lower Court on Exhibit 7 *vis-a-vis* the judgment in LD/1213/76. But the review, evaluation and reliance on evidence of traditional history raises a different problem. The lower Court adopted this position because it held that the appellants predicated their suit on LD/1213/76. In resolving issue one, I came to the conclusion that the appellants did not bring their action upon LD/1213/76 but merely pleaded the judgment as a fact and relied on same as such.

The issue becomes a contest between documentary evidence, i.e. the judgment in LD/1213/76 and the evidence of traditional history. Whereas ordinarily documents do not lie, evidence of traditional history is a recollection from memory dimmed by time and coloured by personal interest and disposition. It is admitted under Section 45 of the Evidence Act as an exception to the rule against hearsay evidence. See *Okonkwo & Anor v Okolo (1988) 1 NSCC 909 SC*. Had the lower Court not erroneously held that the Suit was brought upon LD/1213/76, it would have relied on documentary evidence in preference to traditional history.

Under the best evidence rule, best or primary evidence is that particular means of proof which is indicated by the nature of the fact under investigation as the most satisfactory; it is the best evidence the nature of the case admits. In this case, it is the documentary evidence relied on by the trial Court. Apart from the best evidence rule, the trial Court equally considered evidence of traditional history led by the parties. That Court with the advantage of seeing and hearing the witnesses testify, an advantage the appellate Court cannot enjoy, concluded thus:

> "Where there is a conflict of traditional history one side or the other must make mistakes, yet both may be honest in their belief ..... the best way is to test the traditional history by reference to the fact in recent years established by evidence and by seeing which of the two competing histories is more probable."
>
> See page 295 of the record.

The Court made a finding of fact that

> "the evidence of history as stated by the plaintiffs and his witnesses is more probable and in line with facts of the present day"
>
> See page 296 of the record.

This finding of fact is not perverse and the lower Court should not have disturbed it. See *Balogun v Labiran (1988) 3 NWLR (Part 80) 66 at 77; Mogo Chinwendu v Mbamali (1980) 3-4 SC 32; Theophilus v State (1996) 1 NWLR (Part 423) 139 at 150.*

I resolve issue two in favour of the appellant though issue five is resolved in favour of the respondents against the appellants. Based on the resolution of issues 1 and 2 in favour of the appellants, resolution of issues 3 and 4 in favour of the appellants naturally flows therefrom.

All issues (except issue 5) having been resolved in favour of the appellants, it is my view that the appeal is meritorious and is therefore allowed. Consequently, I set aside the judgment of the lower Court and restore the judgment of the trial Court.

Respondents to pay costs assessed and fixed at ₦50,000.00 to each set of appellants.

Judgment delivered by
Aloma Mariam Mukhtar. JSC

I have had the opportunity of reading the lead judgment delivered by my learned brother Ngwuta JSC. I entirely agree with the reasoning and conclusion reached in the lead judgment, but will like to make some contributions by way of emphasis. The claims before the High Court of Lagos State, as endorsed in the plaintiff's writ of summons are:-

(a) A Damage for trespass by the defendants jointly and severally to all the buildings and structures erected on twenty (20) area land and premises lying being and situate at kilometer 15 along Badagry Expressway Road, Lagos which is better defined in the portion edged Red in Plan No ROC/1A1/90 of 15th June 1990 drawn by R Oluwole Coker Licensed Survey or a copy of which delivered herewith.

(b) An Order for the ejectment of the defendants their servants agents of any person claiming through or under them, from the land in dispute.

(c) An Order of perpetual injunction restraining the defendants whether by themselves, their servants, agents or however from committing or committing further acts of trespass on the land in dispute whether by way of entry thereupon or by same of disposition of any interest thereon."

The defendants counter claimed in their statement of defence. After the evaluation of evidence the learned trial judge dismissed the defendant's counter claim, and entered judgment in favour of the plaintiffs as per their claim. The defendants were aggrieved by the decision, so they appealed to the Court of Appeal. The appeal was dismissed, and defendants have again appealed to this court. Briefs of argument were exchanged by the different sets of parties and they were adopted by the learned Senior Advocate for the 4th and 5th respondents, and the other learned counsel for the 1st - 3rd, 6th - 10th respondents, which raised the following objections:-

"1. Ground 3.06 do not arise from the decision of the lower court Issue I formulated under the said ground is incompetent

2. Ground 3.09 do not arise from the decision of the lower court issue 3 formulated thereon is incompetent."

The argument covering the objections are contained in their brief of argument. It has been thoroughly dealt with in the lead judgment.

Five issues for determination were formulated in the appellants' brief of argument. They have been reproduced in the lead judgment. The second issue for determination is predicated on evaluation of evidence and this is the issue I will highlight. It is a fact that the lower court reviewed the pleadings and evidence of the parties. The settled law is that a party who institutes a civil action must plead the facts of the case and adduce evidence in support of the pleadings, though evidence is not expected to be pleaded. See *Okagbue & Ors. v Romaine (1982) 1 All NLR (page 111); Akinfosile v Ijose (1980) SCNLR 447 and Oche v Christian (2003) FWLR (part 147) page 1128 cited by learned appellants' counsel. See also Ezemba v Ibeneme & Ors (2004) 14 NWLR (Part 894) page 617.*

I will reproduce the salient averments in the plaintiffs/respondent's pleading hereunder. They are:-

"3. Plaintiffs aver that the entire land in plan No MOC/LA1/90 belonged to Ado Family which descended on them through their ancestor the first Ado under native Law and Custom of Yoruba since Ado was a Yoruba man

4. Plaintiffs aver that Ado migrated from Ile-Ife along with others like Ogunfunminire, Asipa and other and they first settled at Isheri. Ado was a farmer, hunter and also a descendant of royal house.

5. Plaintiffs aver that Ado made Orile Ado, his Abode for hunting around all the villages which belong to the Ado family.

6. Plaintiffs aver that Ado consulted his oracle which professed that he should settle on the land portion of which is in dispute and when he settled down, he brought his people to Ado. He later went back to Ile-Ife to have the title of Oba.

9. Plaintiffs aver that Ado became Oba and after his death his children survived him as Oba namely, Oba Suberu, Oba Bankole, Oba Adebayo and Oba Tade Bakare. The 2nd -4th Plaintiffs and other children of the descendants of Ado by inheritance became Ado Chieftaincy Family. The Children inherited the land under native law and custom as family land and it has been so held.

10. Plaintiffs aver that it is part of the customary law of Yoruba, that domestics, slaves, strangers, émigrés of Alabagbes are allowed to live together with their over (sic) on the overlord properties since the overlord has to provide for them. They also farm on the land allocated to them and in return they bring farm products to the overlord.

16 2nd - 4th plaintiffs aver that they have been exercising acts of ownership on the land, defended cases of trespass on the land, sued those who trespassed and they have also let the portion now in dispute to a former tenant Association Business Limited which built a warehouse, petrol station and was in possession until it assigned its interest to 1st plaintiff."

In support of the above averments, the 2nd plaintiff, as PW1 gave the following evidence:-

"The land in dispute belongs to Ado family from time immemorial. The land is part of large track of land owned by the Ado family from time immemorial. Ado came in company of Ogunfunminire Ashipa and others at about 400 years ago. They all came to Isheri. Ado was a hunter and a warrior. Ado looked for a thick forest to hunt dangerous animals. He then found a place had about 12 villages and Towns on the family land ……

I am the 2nd Plaintiff I know the 3rd and 4th Plaintiffs. They are full members of Defendant Family. The 2nd, 3rd and 4th Plaintiffs are descendants of Ado family. We are great-grandchildren of Ado, the founder of the land."

The above was how the plaintiffs traced their title to the land in dispute, vide traditional history and it was not challenged in the course of cross examination. The principle of law that he who asserts must prove is very mush alive in this case, (See Section 135 of the Evidence Act Cap. 112 Laws of the Federation of Nigeria, 1990) for as the plaintiffs have asserted in their pleadings they have proved their traditional history but whether it meets the provision of the law is another matter, which will be dealt with later in this judgment. In civil suits, claims are determine on preponderance of evidence and balance of probabilities. See *Ojomo v Ejeh (1987) 4 NWLR (Part 64) page 216; Elias v. Omo-Bare (1982) 5 SC. 25 and Odulaja v Haddad (1973) 11 SC.357.*

The learned trial judge did not direct his attention to the traditional evidence of the plaintiffs/appellants upon which they predicated their case in the course of determining the case before him. It is as a result of this that the lower court posited the following:-

> "It is therefore left to the plaintiffs to succeed on their traditional history since their claim for trespass and injunction is based on traditional history. They must lead evidence to show the root of their title. They must show how their ancestors had come to own the land in the first place and how the land devolved over the years on the claimants' family until it got to the claimant."

It was after the court below reviewed the appellants' pleadings *vis a vis* PW1's evidence, which I have already reproduced above, that the court below expressed inter alia the following:-

> "The failure of the respondents to plead lineages of Ado and lead credible, cogent and conclusive oral evidence as to how the land devolved through the lineages ……."

The court below is empowered to review and evaluate evidence by Section 16 of the Court of Appeal Act, which stipulates the following:-

> "16. The Court of Appeal may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Court of Appeal thinks fit to determine before final judgment in the appeal and may make an interim order or grant any injunction which the court below is authorized to make or grant and may direct any necessary inquires or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as court of first instance and may re-hear the case in whole or in part or may remit it to the court below for the purpose of such re-hearing or may give such other directions as to the manner in which the court below shall deal with the case in accordance with the powers of that court, or, in the case of an appeal from the court below in that court's appellate jurisdiction, order the case, to be reheard by a court of competent jurisdiction."

However it is only when a trial court fails in its duty to evaluate and make findings that an appellate court will wear the toga of a trial court to review, evaluate and make findings, as empowered by the above provision of Section 16 of the law *supra*. A careful perusal of the record of proceedings reveals that the learned trial judge did not shirk its responsibility on this aspects of the case. On page 294 of the printed record of proceedings can be read the following:-

> "This case is based mainly on the history of the land but in the midst of the maze of labyrinth of history as adduced by the witnesses certain facts clearly emerged. Defendants contended that their ancestors were the founders of the land and the outlying villages, whilst on the contrary the Plaintiffs averred and stated in evidence that it was Ado that owned the land in dispute as well as the village around it ……
>
> The defendants gave history as they know it but even under Cross-Examination were found totally wanting. One of them did not know even how his family came to be known as Agbebeji. They did their best but unfortunately and leaves much to be desired. In the case of *Twimahene Adejijoibi Kojo II v Opanin Kwadwo (sic) Bonole and another 1957 I W.L.R. 1223 at page 1226* Lord Denning stated thus:-
>
> …… In the light of the above as well as from my own observation and from the history as revealed by both parties I am fully convinced that the evidence of history as stated by the Plaintiffs and his witnesses is (sic) a more probable and in line with the fact of the present day."

I believe the above quoted excerpt should have been endorsed by the court below, rather than substitute it with its own finding. The issue treated above must be resolved in favour of the appellant, and even if it is the only issue that is so resolved, and the related ground of appeal succeeds, the appeal in its entirety deserves to succeed in the light of the foregoing reasoning. I also allow the appeal, and abide by the consequential orders made in the lead judgment.

Judgment delivered by
John Afolabi Fabiyi. JSC

I have had a preview of the judgment just handed out by my learned brother Ngwuta, JSC. I agree with the reasons ably advanced therein to arrive at the conclusion that the appeal is meritorious and should be allowed.

The relevant facts touching on this appeal have been properly set out in the lead judgment. The trial court found in favour of the plaintiffs/appellants. On appeal to the court below, the judgment of the trial court was set aside. This is an appeal to this court by the plaintiffs.

Before this court, briefs of argument were filed and exchanged by parties. In a ding-done fashion, the briefs of argument were amended. I propose to touch on issues 1 and 2 in the 2nd amended brief of argument filed on behalf of the appellants. They read as follows:-

> "l. Whether the lower court was right in their (sic) interpretation of Section 12 (2) of the Limitation Laws of Lagos State, Cap 67 and that the judgment in Suit No LD/1213/76 is statute barred and could not he relied Upon by the appellants as a means of proving ownership of the land in dispute (ground 6)
>
> 2. Whether it wax proper for the Court of Appeal to review and evaluate evidence of traditional history of the 2nd - 4th appellants when the learned trial judge claimed to do so, if so whether they properly evaluated same when they found for the respondents and against the appellants (Grounds 3 and 5).

It is my considered opinion that the resolution of Issue 1 rests on the purport and interpretation or Section 12 (2) of the Limitation Law of Lagos State. It relates to enforcement of orders or reliefs granted in judgment validly entered by a court. Such cannot be done outside of twelve (12) years of the delivery of the judgment.

Such a judgment does not become extinct or moribund for all purposes. If it is not reversed by a competent court, it's content can be pleaded as a fact in a future matter as done by the appellants herein. It cannot fall under effluxion of time in the prevailing circumstance. The finding of the court below to contrary cannot stand.

Let me now touch on issue 2 briefly. With respect to findings of fact, an appellate court will not interfere with findings of fact by a trial court except where same was wrongly applied to the circumstances of the case or conclusion reached was perverse or wrong. See: *Nwosu v Board of Customs & Excise (1988) 5 NWLR (Part 93) 225; Nneji v Chukwu (1996) 10 NWLR (Part 378) 265.*

The learned trial judge found

> 'that the evidence of history as stated by the plaintiffs and their witnesses is more probable and in line with facts of the present day'.

This is in tune with the decision in *Kojo II v Bonsie (1957) 1 WLR 1223.* The finding by the trial court in the circumstance was not perverse and should have been left intact and inviolate by the court below.

For the above reasons and more especially the detailed ones adumbrated in the lead judgment, I too feel that the appeal is meritorious and should be allowed. I accordingly set aside the judgment of the court below and restore that of the trial court. I abide by the order in respect of costs as contained in the lead judgment.

Judgment delivered by
Olukayode Ariwoola. JSC

I had had the opportunity of reading in draft the leading judgment of my learned brother, Ngwuta, JSC. I am in total agreement with the reasoning and conclusion arrived at in the said leading judgment that the appeal succeeds and should be allowed.

Accordingly, it is hereby allowed.

Counsel

Aderemi Bashua	…..	For the Appellants
J. K. Adeyi-Odien Baku	…..	For the 1st - 3rd, 6th - 10th Respondents.

P. O. Jimoh-Lasisi, SAN ….. For the 4th - 5th Respondents.
with him
S. A. Mustapha