**EXPLO-TEC NIG. LTD. AND ANOTHER**

**V.**

**CHIEF FRANCIS AGBEBAKUN OBANLA AND OTHERS**

IN THE COURT OF APPEAL OF NIGERIA

THE 22ND DAY OF MAY, 2017

CA/AK/247/2013

**LEX** (**2017) - CA/AK/247/2013**

OTHER CITATIONS

2PLR/2017/116 (CA)

(2017) LPELR-42693(CA)

**BEFORE THEIR LORDSHIPS**

UZO IFEYINWA NDUKWE-ANYANWU, J.C.A

OBANDE FESTUS OGBUINYA, J.C.A

RIDWAN MAIWADA ABDULLAHI, J.C.A

**BETWEEN**

1. EXPLO-TEC NIG. LTD.

2. HRM OBA ISREAL ADEGOKE ADEWUSI (The Olufon of Ifon) - Appellant(s)

AND

1. CHIEF FRANCIS AGBEBAKUN OBANLA

2. MR. WILLIAMS OLUGBENGA

3. OLUFEUNMILAYO OBANLA

(For themselves and on behalf of Ogunlakaye Obanla family of Ifon) - Respondent(s)

**ORIGINATING COURT**

ONDO STATE HIGH COURT, IFON JUDICIAL DIVISION (S. A. Bola, J., Presiding)

**REPRESENTATION/LAWYERS**

O. ODUSOLA with A. O. AJAYI AND A. OLAFIMIHAN - For Appellant

AND

A. A. OJOPAGOGO with, T. FALEYE AND I. I. BEWAJI - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

REAL ESTATE AND PROPERTY LAW - LAND - ACTS OF POSSESSION AND OWNERSHIP - Whether acts of possession and enjoyment of land may be evidence of ownership.

REAL ESTATE AND PROPERTY LAW - LAND - FAMILY PROPERTY/LAND:- Whether a family head/family member can take steps to protect family property even without prior authority of other family members/family head.

**PRACTICE AND PROCEDURE ISSUES**

ACTION - REPRESENTATIVE ACTION: - Parties to a representative action – Who qualifies.

ACTION - REPRESENTATIVE CAPACITY:- Requirements for suing in a representative capacity.

EVIDENCE - BURDEN OF PROOF/ONUS OF PROOF:- Whether a plaintiff must rely on the strength of his case and not the weaknesses of defence case to succeed.

EVIDENCE - DOCUMENTARY EVIDENCE:- When is the proper time for taking an objection to the admissibility of a document.

EVIDENCE - PROOF OF TITLE TO LAND:- Ways by which ownership/title to land may be proved - Whether a plaintiff needs to prove all the five ways.

EVIDENCE - STANDARD OF PROOF:- Standard of proof in an action for declaration of title to land – Scope of.

EVIDENCE - TRADITIONAL EVIDENCE/HISTORY:- The rule as to admissibility of oral evidence of tradition with respect to title or interest in family or communal land – Scope of.

EVIDENCE - TRADITIONAL EVIDENCE/HISTORY:- What is required of a person relying on evidence of traditional history in an action for declaration of title to land.

JUDGMENT AND ORDER - JUDGMENT OF COURT:- When would a plaintiff be entitled to judgment.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

At the trial court, the Respondents prayed the following reliefs: a declaration that the Plaintiffs are entitled to the Statutory Right of Occupancy of the land in issue; a declaration that the purported lease agreement between the Appellants in respect of some portions of the said land is void, null and of no any legal effect. The Appellants filed their Statement of Defence.

The case of the Respondents was that the land in dispute was originally founded by their great grandfather called Opooro, who cultivated and farmed on the land. After the death of Opooro, his son Odionwere succeeded to the farmland. After the demise of Odionwere, his sons Ogunlakaye, Inaogun and Olumadi took possession and also farmed on the land. Ogunlakaye begat Olotu, Adegbulu and Mrs Lebe. Mr. Olotu begat Francis Obanla while Mr. Adegbulu begat Olorunda and Francis Afolabi. After the demise of Pa Olotu and Pa Adegbulu, the 1st Respondent took possession of the said land on behalf of the family and put tenants on some portions.

The Respondents also contended that the land in dispute had been subject to a series of dispute which were all resolved by the Court and by the Obas in favour of the Respondents' family. They referred to the judgment of Ifon Customary Court.

The Appellants on the other hand, contended that land ownership in Ifon is communal with absolute title vested in the Olufon of Ifon who holds same in trust for the people of Ifon.

At the conclusion of the trial and address of counsel the learned trial judge entered judgment for the Plaintiffs/Respondents and granted all the reliefs sought.

The Appellants being dissatisfied with the judgment of the trial court filed an appeal at the Court of Appeal.

**DECISION(S) APPEALED AGAINST**

The trial Court entered judgment for the Respondents and granted all the reliefs sought. Dissatisfied, the Appellant appealed to the Court of Appeal.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANTS:*

"1. Whether the learned trial judge was right in holding that the judgment of Ifon Customary Court supported the case of the Respondents.

2. Whether the learned trial judge was right in granting the declaratory reliefs sought by the Respondents.

3. Whether the learned trial judge was right in granting judgment to the Respondents in representative capacity."

*BY RESPONDENTS*

[The Respondents adopted the issues formulated by the Appellants].

**MAIN JUDGMENT**

**UZO IFEYINWA NDUKWE-ANYANWU, J.C.A.** (DELIVERING THE LEADING JUDGMENT):

This is an appeal against the judgment of the Ondo State High Court, Ifon Judicial Division delivered by Justice S. A. Bola on 2nd August, 2013.

By an Amended Writ of Summons together with an Amended Statement of claim filed on 27th September, 2011, the Claimants now Respondents claimed as follows:-

"1. A DECLARATION that the Plaintiffs are entitled to the Statutory Right of Occupancy of the land lying, being and situated along Oriohin/Omialafa, Ago Obanla, Owo-Ifon Expressway, Ifon, a place within the jurisdiction of this Honourable Court.

2. A DECLARATION that the purported lease agreement between the Defendants in respect of some portions of the said land is void, null and of no any legal effect."

The Defendants now Appellants filed their Statement of Defence on 28th June, 2011 to the action.

The Respondents thereafter filed their Reply to the Statement of Defence on 17th November, 2011.

At the close of pleadings the case proceeded to trial. The Respondents called five (5) witnesses and tendered two [2] Exhibits while a total number of two (2) witnesses testified for the Appellants and no Exhibits were tendered by the Appellants.

It is the case of the Respondents at the trial Court that the land in dispute was originally founded by their great grandfather called Opooro, who cultivated and farmed on the land. Opooro gave birth to Pa Odionwere. Pa Odionwere begat Ogunlakaye, Inaogun and Olumadi. After the death of Opooro, his son Odionwere succeeded to the farmland. After the demise of Odionwere, his sons Ogunlakaye, Inaogun and Olumadi took possession and also farmed on the land. Ogunlakaye begat Olotu, Adegbulu and Mrs Lebe. Mr. Olotu begat Francis Obanla (1st plaintiff/Pw1), while Mr. Adegbulu begat Olorunda and Francis Afolabi (the 2nd and 3rd Plaintiffs respectively). After the demise of Pa Olotu and Pa Adegbulu, the 1st Plaintiff took possession of the said land on behalf of the family and put tenants on some portions. The Respondents also contended that the land in dispute had been subject to a series of dispute which were all resolved by the Court and by the Obas in favour of the Respondents' family. They referred to the judgment of Ifon Customary Court (Exhibit A).

The Appellants on the other hand, contended that land ownership in Ifon is communal with absolute title vested in the Olufon of Ifon who holds same in trust for the people of Ifon. Counsel contended that the entire Ifon land was first settled upon and founded by Oba Iremokun, the first Olufon of Ifon. It is the case of the Appellants that the reigning Olufon on behalf of Ifon Community sell, grant and lease out Ifon land, proceeds of which are used for the benefit of the town. They also alleged that the 1st Appellant was put in possession of the land in dispute by the 2nd Appellant. The Appellants went ahead to trace the other Olufon who exercised undisputed and undisturbed ownership over the entire Ifon land.

At the conclusion of the trial and address of counsel the learned trial judge entered judgment for the Plaintiffs/Respondents and granted all the reliefs sought.

The Appellants being dissatisfied with the stance of the Court below filed by order of Court an Amended Notice of Appeal on 12th February, 2016 containing 9 grounds of appeal.

In compliance with the Rules of this Court, the parties filed and exchanged briefs of argument.

The Appellants' brief was filed on 2nd February, 2015 but deemed properly filed on 31st January, 2017. In their brief, the Appellants formulated three issues for determination. They are as follows:

"1. Whether the learned trial judge was right in holding that the judgment of Ifon Customary Court supported the case of the Respondents.

2. Whether the learned trial judge was right in granting the declaratory reliefs sought by the Respondents.

3. Whether the learned trial judge was right in granting judgment to the Respondents in representative capacity."

The Respondents on the other hand filed their brief of argument on the 27th February, 2017; wherein they adopted the issues as formulated by the Appellants.

In response to the Respondents' brief, the Appellants also filed a Reply brief on 8th March, 2017.

Before delving into the main issues of this appeal, it is important to mention the Preliminary Objection raised by the Respondents at paragraph 4.01 of their brief in relation to the competency of ground 2, 3, 4, 5, 6 and 8 of the Appellants' Amended Notice of Appeal.

It is the contention of counsel that where no issue is formulated from a ground of appeal, it is deemed abandoned and therefore liable to be struck out. He referred to the case of AFRICAN PETROLEUM LTD V OWODUNNI (1991) 8 NWLR (PT.210) 391; E. B. UKIRI V. GECO-PRAKLA (NIG) LTD (2010) 16 NWLR (PT.220) 544.

Counsel submitted that no issue was formulated by the Appellants in respect of ground 2, 3, 4, 5, 6 and 8 of the Appellants' Amended Notice of Appeal, thus it is deemed abandoned. He thus urged this Court to strike same out.

The Respondent in his Preliminary Objection argued that the Appellants did not formulate any issues from Grounds 2, 3, 4, 5, 6 and 8 of the amended Notice of Appeal and urged the Court to strike these grounds out as having been abandoned.

The Appellants in his Reply did not make any submission on this preliminary Objection. It would be taken that the Appellants have conceded to this Preliminary Objection.

That being the case, I have no other option than to strike out Grounds 2, 3, 4, 5, 6 and 8.

ISSUE 2

Issue 2 is the main issue in this appeal so I would like to deal with it first in the determination of this appeal.

Learned counsel for the Appellants submitted that it is trite law that the onus is on a Plaintiff seeking a declaration of title to a land in dispute to establish his title on the strength of his own case and not on the weakness of the Defendant's case. He referred to the cases of SANKEY V ONAYIFEKE (2014) ALL FWLR (PT.749) 1034; OYEDIRAN V. ADEGBITE (2014) ALL FWLR (PT.733) 1967.

It is the contention of counsel that there were seven ways of proving title to land but for a party to succeed on a claim for title to land at least one of such methods must be proved. He referred to the cases of OTUKPO V. JOHN (2013) ALL FWLR (PT.661) 1509; FAYEMI V. AWE (2010) ALL FWLR (PT.528) 862; IDUDUN V. OKUMAGBE (1976) NMLR 200; AROWOLO V. OMME (2010) ALL FWLR (PT.514) 117; AWENI V. OLORUNKOSEBI (1991) 7 NWLR (PT.203) 336; ONISESE V. OYELEYE (2008) ALL FWLR (PT.446) 1826; BANKOLE V. ADEYEYE (2014) ALL FWLR (PT.721) 1570.

He further contended that where a party claims for declaration of title is based on traditional history; he must plead and prove the following:

(a) Who founded the land

(b) How the land was founded and

(c) The particulars of the intervening owners through whom he claim.

He referred to the cases of OKPALA EZE OKONKWO & ORS V NWAFOR & ORS (2002) 5 SC 144; OKOKO V. DAKOLO (2006) 14 NWLR (PT.1000) 401; IBIKUNLE V. LAWANI (2007) 3 NWLR (PT.1022) 580.

It is the contention of counsel that in the instant case the Respondents having relied on traditional history/evidence failed to plead and prove a) and b) above. Thus the finding of the trial judge that the Respondents' history revealed how the land was founded is perverse.

He also contended that the trial judge was wrong in holding that the Respondents' traditional history is credible, reliable and conclusive in view of the material contradictions in the evidence of the Respondents. Some of the material contradictions include:

1. The evidence of PW1 that Opooro founded the land while on the other he testified that he does not know Opooro.

2. Evidence of PW1 that he personally litigated on the disputed land and was adjudged the owner of the land and on the other hand testifying that his family owned the disputed land. He further testified that Ogunlakaye owned the disputed land

3. Evidence of PW2 to the effect that Opooro Obanla was his progenitor who founded the land and under cross-examination he testified that Ifon, as a community was founded by Olaniyi.

He thus urged this Court to resolve this issue in favour of the Appellants.

Learned counsel for the Respondents in arguing this issue submitted that there are five ways of proving title to land and for a party to succeed on a claim for title to land one or more of such methods must be proved. It is the contention of counsel that in the instant case the Respondent in proving title to the land in dispute relied on both traditional history and acts of long possession.

He contended that contrary to the assertion of the Appellants, the Respondents in relying on traditional evidence pleaded and proved

(a) Who founded the land

(b) How the land was founded and

(c) The particulars of the intervening owners through whom he claim.

Thus the trial judge's findings were not at variance with the Respondents' pleadings and evidence and therefore not perverse.

He referred to paragraphs 5 to 8 of the Amended Statement of Claim at page 19 of the records; the evidence of PW1 and PW2 at page 50 and 56 of the records respectively.

Counsel further submitted that where two parties claim to be in possession of land, the law ascribes possession to the one with better title. He submitted that the Respondents have proved a better title based on the oral, traditional and documentary evidence before the trial Court.

On material contradictions, counsel contended that there are no contradictions in the case of the Respondents and even if there were such can be seen as minor discrepancies which cannot be fatal to the Respondents' case. He referred to the case of TAIWO V OGUNDELE (2012) ALL FWLR (Pt 639) SC 1033.

He thus urged this Court to hold that the Respondents have proved their case on balance of probability and preponderance of evidence and that the trial judge was right in granting judgment in favour of the Respondents.

The Appellants' counsel in his reply submitted that where the traditional history pleaded by a party fails, such a party will not be allowed to hinge acts of long possession on a traditional history that has failed. He referred to the case of AJANI V LADEPO (1986) 3 NWLR (Pt 28) 276.

RESOLUTION

The Courts have held in a plethora of cases that there are five ways of proving or establishing title to or ownership of land. These are by

(1) Traditional evidence

(2) Production of documents of title duly authenticated in the sense that their due execution must be proved.

(3) By positive acts of ownership extending over a sufficient length of time;

(4) By acts of long possession and enjoyment of the land

(5) By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land, would in addition, be the owner of the land in dispute.

Establishment of one of the five ways is sufficient proof of ownership. AYOOLA V. ODOFIN (1983) 11 SC (PG.120), EWO V. ANI (2004) 17 NSCQR (PG.36), NKADO V. OBIANO (1997) 5 NWLR (PT.503) PG.31, NKWO V IBOE (1998) 7 NWLR (PT.558) PG.354. ADESANYA V. ADEROUNMU (2000) 6 SC [PT.II] PG.18.

The Respondents in this appeal in the Lower Court as Plaintiffs, in proof of their title relied on Traditional Evidence and long positive acts of ownership extending over a sufficient length of time.

The Respondents in their Statement of Claim traced their title from himself back to the founder of the land, his ancestor. See paragraph 5 - 8 of Statement of Claim reproduced hereunder:

5. Late Pa Opooro originally founded and cultivated the virgin land several years ago and took possession of the land until his demise after which the ownership of it devolved on his son, late Pa Odionwere.

6. Pa Odionwere also farmed on the land and remained thereon as owner until he joined his ancestors many years ago. Upon the demise of Pa Odionwere, Ogunlakaye, Inaogun and Olumade, his sons, they took possession and farmed thereon until they in turn died,

7. Late Pa Ogunlakaye begat many children among whom were Mr. Olotu, Mr. Adegbulu and Mrs. Lebe.

Mr. Olotu begat the 1st Plaintiff while Mr. Adegbulu begat Olorunda and Francis Afolabi, the 2nd and 3rd Plaintiffs respectively.

8. The Plaintiffs shall aver at the trial of the suit that both Pa Olotu and Pa Adegbulu were in possession of the said land as owners without let from anybody until they both passed on. Thereafter the 1st Plaintiff took possession of the said land on behalf of the family and put tenants on some portions thereof from whom they collect tributes annually.

The 1st Respondent in his evidence in Court emphasized the traditional history from the founder Pa Opooro to himself. The 1st Respondent proved that he had tenants on the land. One of his tenants is Prophet Nihin on the land and others - PW3, PW4 and PW5.

The N100,000 given to the 1st Respondent in 2003 was given by the 2nd Appellant before the 1st Appellant appeared on the land. The 2nd Appellant gave the money, N100,000 to the 1st Respondent with a promise that the 1st Appellant would discuss the question of leasing the land from the 1st Respondent when the 1st Appellant came back from South Africa.

This piece of evidence goes to show that 2nd Appellant recognises that he cannot rightly lease the land to 1st Appellant. He therefore recognized that the land is the Respondents' family land.

The 1st Respondent in proof that he is enjoying long ownership, PW3, PW4 and PW5 testified that they are 1st Respondent's tenants and pay rent with their crops. PW5 had lived as a tenant of 1st Respondent for over 20 years. PW3 has lived as tenant on the land for almost 20 years too. These pieces of evidence go to show that the 1st Respondent had enjoyed long ownership of this land to exercise such acts without let or interruption.

It is trite law that acts of long possession and enjoyment of land are prima facie evidence of ownership or of a Right of occupancy of the particular piece of land in respect of which such acts are done. OYADARE V. KEJI (2005) 7 NWLR (PT.925) PG.57, MASKALA V. SILLI (2002) 13 NWLR (PT.784) PG.216 SC.

The Plaintiffs/Respondents had the burden of setting out clearly by who and how the land was founded and the names of persons who had exercised acts of ownership on the land before it devolved upon him. OLOKOTINTIN V SARUMI (2002) 13 NWLR (PT.784) PG. 307.

Finally a party relying on evidence of traditional history must plead his root of title as in this case. See paragraphs 5 - 8 of the Statement of Claim. Not only that, he must show in his pleadings who those ancestors of his were and how they came to own and possess the land and eventually pass it on to him, otherwise his claim will fail. The Respondents in their pleadings and in their evidence viva voce had proved their entitlement to the declaration they sought through traditional history and long ownership of the land in dispute. OKOKO V DAKOLO (2006) 14 NWLR (PT.1000) PG 410.

Even though strictly speaking, traditional evidence is hearsay evidence which according to the Rules of evidence is inadmissible but is made admissible by Section 44 of the Evidence Act, which provides that where the title to or interest in family or communal land is in issue, oral evidence of family, or communal tradition concerning such title or interest is relevant. EWO V ANI (2004) 3 NWLR (PT.861) PG 610.

The Appellants in this case has not shown in any way that they have a better title than the Respondents. It is trite law that a Plaintiff seeking a declaration of title succeeds by the strength of his case and not by the weakness of the Defendant's case.

In a declaratory action, the onus of proof lies on the Plaintiff and he must succeed on the strength of his own case and not on the weakness of the defence except where the case for the defence supports the Plaintiff's case. NKWO V. IBOE (1998) 7 NWLR (PT.558) PG.354, UCHE V. EKE (1998) 9 NWLR (PT.564) PG.26.

A party is only entitled to judgment if a trial Court believes and accepts his evidence and if such evidence supports his case. BELLO V ARUWA (1999) 8 NWLR (PT.615) PG 454.

In the instant case, the Court critically looked at the pleadings of parties and the evidence proffered to buttress it. Therefore, the burden of proving that the land belonged to him is on the Plaintiff, until he does that, the burden will not shift.

The Respondents had proved their title to land by way of traditional history tracing his genealogy tree of the family ownership of the land from the past to the present. This the Respondents have succeeded in doing.

The Respondents had also given in evidence that the land is named after one of his ancestors. The land is called Ago Obanla.

In land matters like in civil cases, parties must prove their case on preponderance of evidence and on the balance of probabilities. ELIAS V. OMO-BARE (1982) 5 SC PG.25, AGBI V. OGBEH (2006) 11 NWLR (PT.990) PG.65.

On the question of contradiction, I don't see any material contradiction which can upturn the decision of the trial Court. The Appellants had argued that the 1st Respondent in his evidence said he did not know Opooro the founder of the land. This might be the semantics in language. He stated in his Statement of Claim the Opooro was the founder of the family land. That the 1st Respondent does not know him might be that even though he founded his family land, he personally did not know him. He only knew he was his ancestor that founded the land.

With the following, the judgment of the trial Court was not perverse in any sense of the word. The Respondents proved their title and therefore were entitled to the declaration sought.

This issue is resolved against the Appellants.

ISSUE 1

Learned counsel for the Appellants submitted that the trial judge was wrong in holding that the judgment of the Ifon Customary Court supported the case of the Respondents. It is the contention of counsel that the judgment of Ifon Customary Court tendered by the Respondents Exhibit A to proof their title to land is inadmissible/irrelevant and has no probative value in determining the life issues in this suit. The reason being that:

1. The land litigated upon in Exhibit A is not ascertainable or defined and as such cannot be used in the instant case.

2. The land described in Exhibit A is different from the land in dispute in the instant case.

3. The evidence led before the Customary Court is different from the evidence led before the trial Court with respect on who founded the land.

4. The parties are different.

He thus urged this Court to resolve this issue in favour of the Appellants.

Learned counsel for the Respondents in arguing this issue pointed out that the issue of admissibility of Exhibit A was never raised by the Appellants at the Lower Court. Thus the Appellants are estopped from raising same as a fresh issue without obtaining leave of Court. He further contended that what governs admissibility is relevancy. He contended that Exhibit A is relevant in the instant case as it shows that there was a previous judgment in favour of the Respondents in respect of part of the land forming the land in dispute.

On the issue of contradictory evidence, learned counsel for the Respondents submitted that the evidence of the Customary Court is in tandem with that of PW1 at the trial Court. He referred to page 116 of the records and the evidence of PW1 at page 50 of the record, where it was shown that Olotu Obanla was a descendant of Opooro.

With respect to Appellants' argument that the judgment of the Customary Court is devoid of particulars of the identity of the land, counsel contended that the said issue was not raised at the trial Court. However he further submitted that there was evidence that the identity of the land was ascertained by the Court and the 1st respondent based on a visit to locus in quo. He also contended that the Customary Court judgment are given in latitude and thus should be construed liberally.

Learned counsel for the Appellants in his reply submitted that the argument of the respondent that what governs admissibility is relevancy is misconceived. According to counsel there are three things that govern admissibility. They include:

1. Whether the document is relevant;

2. Whether the document or facts relating to same is pleaded; and

3. Whether the document is in the form prescribed by the law.

He contended that in determining the admissibility of Exhibit A, it is very important to show that the subject matter in Exhibit A and the land in dispute in the instant case are the same. Where this is not so, the relevancy and the probative value to be attached to same are in doubt. He referred to the case of ETAJATA V OLOGBO (2007) ALL FWLR (Pt 386) 584.

RESOLUTION

The judgment obtained from the Customary Court - Exhibit A was tendered without any objection by the Appellants. The proper time to object to the admissibility of a document where necessary, is when it is tendered in evidence. LAWSON JACK V SHELL PET. DEV. CO. [NIG.] LTD. (2002) 13 NWLR (PT.783) PG. 180, AVONG V. K.R.P.C. LTD. (2002) 14 NWLR (PT.788) PG. 508.

The judgment of the Customary Court, Exhibit A is to prove that the Respondents won in the litigation over part of the land in issue. Moreover it goes to show that land does not reside in the Olufon of Ifon as contended by the Appellants.

Exhibit A is therefore relevant in the just determination of this case. This issue is also resolved against the Appellants.

ISSUE 3

Learned counsel for the Appellants submitted that a party who avers two contradictory positions is not entitled to the favor of the Court. He referred to the cases of DAMINA V AKPAN (2011) ALL FWLR (Pt 580) 1310: JEGA V ALIU [2010] ALL FWLR (Pt.502) 1082. He contended that the material contradictions emanating from the Respondents' witnesses on whether PW1 exclusively owns the land and whether the disputed land is a family property is a veritable platform for the trial Court to dismiss the Respondents' case in its entirety.

He thus urged this Court to resolve this issue in favour of the Appellants.

Learned counsel for the Respondent on the other hand submitted that once the pleadings and the evidence establish conclusively, a representative capacity and that the case has been fought throughout in that capacity, a trial or appellate Court can and will be entitled to enter judgment for or against the party in that capacity. He relied on the case of USHIE v AGBALU (2013) ALL FWLR (Pt.686) 581.

It is thus the contention of counsel that the Respondents having fought the action at the trial Court in a representative capacity, the trial judge was right in granting judgment to the Respondents in that capacity.

On Appellants' argument that Exhibit A does not support the case of the Respondent because it was gotten by PW1 in his personal capacity, counsel contended that PW1 being a family member can sue with or without the consent of other members of the family to protect family property or his own interest in it. He referred to the case of ANIEKA MELIFONWU & ORS V CHARLES EZENWA EGBUYI & ORS (1982) 9 SC 156. Furthermore counsel contended that Exhibit A was only used to show the Court that PW1 had once litigated on part of the land forming the land in dispute.

Learned counsel for the Appellants in his reply submitted that the issues as canvassed by the Appellants showed material contradictions in the case of the Respondents and not merely on whether a party can institute action in defence of family property. He also contended that the case of USHIE V AGBALU (supra) relied by the Respondent is not helpful to their case.

RESOLUTION

The principle is that:

"for an action to lie in a representative capacity, there must be a common interest, a common grievance and the relief must be beneficial to all."

IDISE V. WILLIAMS INTERNATIONAL LTD. (1995) 1 SCNJ PG. 120, OFIA v EJEM (2006) 11 NWLR (PT. 992) PG. 652. A fortiori, an action being defended in a representative capacity must be by persons who have a common interest, against whom there lies a common grievance and the relief sought must be such for which the persons sued can all be held liable, jointly and severally. ALAFIA V. GBODE VENTURES (NIG) LTD (2016) LPELR 26065.

In the present appeal, the Respondents in the Court below sued in a representative capacity because there had a common interest - their family land.

In a representative action, both the named Plaintiff or Defendant and those they represent are parties to the action although the named representative - Plaintiff/Defendant is "dominus litis" until the suit is determined. Thus, for the purpose of initiating any process in a representative action, such process must be by and in the name of the named Plaintiff or Defendant so long as his mandate from those he represents remain acceptable and uncountermanded. OGUNYOMBO V OOKOYA (2002) 16 NWLR (PT.793) PG 224.

This appeal is a continuation of the suit in the Court below. The parties are still the same. It should also be noted that an individual can sue to protect family land without the consent of the family especially where the head of family is dragging his feet.

Invariably a member of a family has capacity to sue to protect family properties. Indeed any member of the family whose interest is threatened by the wrongful alienation or wrongful interference with family property can sue to protect his interest, whether with consent or without the consent of the other members of the family. For if he does not act, he may find himself being held to be standing by when his Rights were being taken away. MOZIE V MBAMATU (2006) 15 NWLR (PT.1003) PG. 466. EZEKUELE V ODOGWU (2002) 8 NWLR [PT.784] PG.366.

Similarly it has been held that a family member who has an interest in a family land may sue when the head of family neglects or refuses to do so. MBAMALU V MOZIE (2002) 2 NWLR [PT.751] PG 345. MOZIE V. MBAMALU (SUPRA).

A family member who perceives that someone is encroaching on family land has the locus standi to sue, however, he must show that he has sufficient interest in the action.

This issue is also resolved against the Appellants. Having resolved all the three issues articulated by the Appellants for determination against them, this appeal is therefore lacking in merit. It ought to be dismissed. It is dismissed.

The judgment of the Lower Court is affirmed.

Cost is assessed at N50,000.00 against the Appellants.

**OBANDE FESTUS OGBUINYA, J.C.A**.:

I had the privilege to peruse, in draft, the well-articulated leading judgment delivered by my learned brother: Uzo I. Ndukwe - Anyanwu, JCA. I am in, total, agreement with the reasoning and conclusion in it. I, too, find the appeal as wanting in merit and dismiss it. I abide by the consequential orders decreed in the leading judgment.

**RIDWAN MAIWADA ABDULLAHI, J.C.A**.:

I read in advance the draft judgment of my learned brother, UZO I, NDUKWE-ANYAWU, JCA just delivered.

My lordship has dealt exhaustively with all the issues raised for determination in this appeal. I adopt the reasoning and conclusions reached therein as mine.

The three issues having been resolved against the Appellant, the appeal lacking merit and ought to be dismissed. I too dismiss the appeal. I also abide by the consequential orders including the order as to costs.