IN THE SUPREME COURT OF NIGERIA

On Friday, the 8th Day of October 1976

Before their Lordship

Atanda Fatayi-Williams ..... Justice Supreme Court
Mohammed Bello ..... Justice Supreme Court
Andrews Otutu Obaseki ..... Justice Supreme Court

SC309/74

Between

D.O. Idundun Chief P.O. Awani A. E. Hesse C. A. Lorie J. D. Oruru (for themselves and on behalf of Ogitsi family of Okere .... Appellant
Warri.) Itsekiri Communal Land Trustees Erejuwa II
The Olu of Warri (for himself and on behalf of the Itsekiri people)

And

Daniel Okumagba (for himself and on behalf of Olodi .... Respondent
Oki
and Ighogbadu families of Idimi-Sobo
Okere
Warri)

Judgment of the Court

Delivered by
Atanda Fatayi-Williams. J.S.C

In Suit No W/48/1968 commenced in the High Court of the Mid-Western State sitting in Warri, the plaintiffs claimed against the defendants jointly and severally:-

"1. A declaration that in accordance with Itsekiri Customary Law, all that piece or parcel of land at Okere, Warri, described in Plan No WE.2367 filed in this suit and verged pink is the property of the Ogitsi Family of Okere subject only to the overlord-ship of the Olu of Warri now vested in and exercisable by the Itsekiri Communal Land Trustees by virtue of the Communal Land Rights (Vesting in Trustees) Law 1959 and the Warri Division (Itsekiri Communal Land) Trust Instrument, 1959.

2. A declaration that, in accordance with Itsekiri Customary Law, defendants have forfeited their rights of user and/or occupation and any other rights or estate in or over that part of the land in dispute marked Area "B' and any right they may have in or over that part of the land in dispute marked Area 'A' in the Plan No. E.2367 filed by the plaintiffs in this suit.

3. An order of injunction to restrain the defendants, their servants and/or agents and any other person or persons purporting to claim under or through them from entering the land in dispute and/or interfering with plaintiffs' rights and interest in and over the said land in dispute and in particular from granting leases or other disposition of the same to any other persons or collecting rents or any other dues from any other persons in respect of the land in dispute."

Pleadings were ordered and were duly delivered.

The averments in the plaintiffs' amended statement of claim and the evidence adduced in support showed clearly that the claim was based partly on traditional evidence and partly on acts of ownership. The averments in the defendants' statement of defence and the evidence given by them in support gave a completely different version of the traditional evidence. The

defendants also testified as to their acts of ownership on the land in dispute. It must be pointed out at this stage, however, that the defendants did not counterclaim for title to the land.

In a considered judgement, the learned trial judge after reviewing, at great length if we may say so, all the evidence adduced by both parties, rejected the traditional evidence adduced in support of the plaintiffs' claim after observing as follows:-

"Considering first the traditional evidence in the case, my view of that aspect of the evidence in plaintiffs' case whereby plaintiffs have sought to establish that the land in dispute and even also Okere Village were part of the kingdom founded by Ginuwa I and also their evidence that Ogitsi owned the whole of Okere land including the land in dispute in this case is that it is unconvincing.

The plaintiffs say that Ginuwa I founded a kingdom and that before Ekpen came to Okere the area of Okere was or would be part of that kingdom. There is no evidence of the extent or area covered by that kingdom, nor is there any evidence going to show any act or acts in history which made the area part of the kingdom founded by Ginuwa I before Ekpen came there. .....
.....
The evidence in plaintiffs' case only shows that Ginuwa I when he was trying to make a settlement after leaving Benin got as far as Ijalla where he ultimately settled, lived died and was buried. There is no evidence in plaintiffs' case going to show that in the process of making his settlement or kingdom he or any persons under him settled anywhere beyond Ijalla and towards or in Okere.

I do not believe that any kingdom founded by Ginuwa I extended to Okere. Plaintiffs' evidence and also evidence in the whole case do not prove such extent of any kingdom founded by Ginuwa I."

As to the veracity of the geneological evidence, the learned trial judge observed as follows:-

"The evidence in plaintiffs' case is that Ginuwa I founded his kingdom about 1485 and evidence in the case established that he got to Ijalla.

The evidence in the plaintiffs' case is that the first of the ancestors of the Idimisobos, that is, the defendants' people, to come to Okere came there during the reign of Olaraja Arukuleyi and the plaintiffs put the time of Arukuleyi's reign at about two hundred years ago or more. The Olu then was Akengbuwa who was on the throne from 1795 to 1848 (see the evidence of plaintiffs' 6th witness, Chief Begho).

From 1485 when Ginuwa I founded his kingdom to 1795 when Akengbuwa became Olu and during whose reign plaintiffs say Arukuleyi was Olaraja is about three hundred years, actually three hundred and ten years to be precise.

The only Olaraja mentioned by the plaintiffs before that interval was Ogitsi and Gbegbenu. All that plaintiffs were able to say of Olaraja Gbegbemu's geneology is that he is descended from Ogitsi. .....

The view I take of this aspect of the evidence in plaintiffs' case is that they are not certain about the precise geneological connections of the said persons and that this is so is even confirmed by the evidence of 1st plaintiff when he said

'Gbegbenu is a descendant of Ogitsi* I do not remember the father of Gbegbenu.'"

After considering the following books to which he was referred in the course of his address by learned counsel for the plaintiffs -

(1) "The Benin Kingdom and Edo-speaking peoples of Southern Nigeria" by R. E. Bradbury and P. C. Lloyd; and
(2) "A Short History of Benin" by Jacob Egharevba,

as to how Ginuwa I left Benin, the learned trial judge observed as follows:-

"Save as to the date of departure of Ginuwa from Benin City and his settling finally at Ijalla and founding a kingdom, none of

the books affords any reliable basis for testing the veracity of the rest of plaintiffs' traditional evidence"

The learned trial judge also considered a third book cited before him - P. A. Talbot's book on "The Peoples of Southern Nigeria" - and observed that that book only shows that Ginuwa left Benin about 1480 to found an Itsekiri Kingdom and that nothing therein referred to by learned counsel dealt with how Okere was founded.

Since it is implicit in the second leg of the plaintiffs' claim that the defendants were in possession of most of the portion shown as Areas 'A' and 'B' in the land in dispute as indicated in the plaintiffs' survey plan (Ex. 2), the learned trial judge dealt at great length with the evidence as to how the defendants came to be in possession of these two areas. He also dealt with that given in respect of the area shown as "Socio-Cultural Corporation Land" in the said plan.

The observation of the learned trial judge with respect to Area 'B' reads -

"Learned counsel for the plaintiffs amongst his submissions to court said that even though defendants granted leases of lands to persons in area 'B', it has not been shown that such lessees are not members of Oki, Olodi and Igho-gbadu families. There is on the other hand no evidence that they are members of defendants' families. Furthermore, plaintiffs' 6th witness did testify that the persons to whom the defendants granted leases in parcel 'B' were not necessarily members of defendants' families.

The plaintiffs said they allowed defendants area 'B' first to farm on and later to build houses on a strip measuring about two hundred feet wide thereof. The defendants said that they got no permission from plaintiffs to use area 'B' and do the acts they have been doing thereon.

I have earlier on stated the law as to where the onus of proof lies in this type of case. On the point now being considered the onus lay on the plaintiffs to prove that the defendants got into parcel 'B' in the way plain-tiffs said defendants got there. This they have not done. .....

The conduct of plaintiffs' 6th witness, as an incontrovertible member of the Ogitsi family in not only taking leases of land in parcel 'B' of Exhi-bit 2 but also going to witness a lease by another person who took a lease of land in the said parcel from defendants, shows that he knew that the defendants and not Ogitsi family own parcel 'B'. I have already said the 1st plaintiff and plaintiffs' 3rd witness are not per-sons whose evidence can be relied on……. The plaintiffs said that they allowed the defendants at the latter's request to farm on parcel 'B' and subsequently also to use a strip about two hundred feet wide on parcel 'B' abutting on Upper Erejuwa Road for the building purposes of their (defendants') children. Chief Begho stated the year of the latter permission to be 1954.

I do not believe the said evidence as to permission. I do not believe defen-dants got permission from anyone to use any part of parcel 'B'."

With respect to the portion shown as parcel 'A' in the said plan (Ex.2), the learned trial judge observed as follows:-

"As regards parcel 'A', the plaintiffs said the police, until defendants entered into it and bulldozed it and laid it into plots, was a thick bush, and that there was no farming in the place before it was bull-dozed. They never took their surveyor into the bush.

The evidence in the defendants' case is that members of their families have been farming on parcel 'A', planting food and cash crops therein. Their surveyor in his evidence said he saw all the features he showed on Ex. 4l, the plan he made for the defendants.

The plaintiffs on their plan have shown rubber plantations belonging to various per-sons and two of the said persons are Nelson Tseke and Chief Iwere Odobriken. These two persons on their own showing by their evidence, are descended from both the Ogitsi and defendants' families. .....Chief Iwere Odobriken in answer to questions by learned counsel for the defendants admit-ted that one Madam Esale, whom he said belonged to Ighogbadu family had a rubber plantation in parcel 'A' on Exhibit 2. .....

The plaintiffs who said that all the persons whom they said raised plan-tations in parcel 'A' did so with their permission offered no explanation as to how Madam Esale came to raise her plantation close to the plantation of plaintiffs' 3rd witness.

The fact that Madam Esale of Ighogbadu family, who has not been con-nected with Ogitsi family, raised a plantation on parcel 'A' and that, as plaintiffs' 3rd witness said, she did so in I960, that is eight years before the present action was instituted, and also the fact that the plaintiffs have not explained how she came to be there, tilts the scale in favour of the evi-dence of the defendants on record that members of the defendants' families have been farming on parcel 'A' and that the persons shown on plaintiffs' plan Ex. 2 as owning rubber plantation thereon planted them with the permission of the defendants as the truth. I do not believe the evidence of the plaintiffs and their witnesses on the point. I believe the evidence of the defendants on the point."

The learned trial judge then went on to con-sider the decision in Suit No. W/111/71 (Ex. 48) and the survey plan of the case (Ex.48B). That decision is in respect of a case in which the pre-sent defendants successfully defended their title to and possession of a piece of land which falls within parcel 'A' in Exhibit 2. The learned trial judge then made the following observations about the decision and the said survey plan (Ex. 48B):-

"Superimposition of Exhibit 48B on Exhibit 2 in such a way that Ugborikoko road and the plantations shown by the road therein fall on the positions where Ugborikoko road and the planta-tions are shown on Exhibit 2, will show clearly that a substantial part of the extra portion of the land in dispute in Suit W/111/71 in which the present de-fendants successfully defended their title to and possession of the land in dispute in that case falls within the land shown as parcel 'A' on Exhibit 2. The superimposition stated earlier will show identical portions of Ogbogboro Stream in either plan to coincide. So that it is also clear from the result of Suit No. W/111/71 that the present defendants have been in possession of the said land, at least from 1960, the year Chief Iwere Odobriken said Esale's plantation was raised and this also tilts the scale in favour of the view that the defendants here have been and are in possession of parcel 'A' as defendants said from when their ances-tors founded that portion of the various tracks of land founded by them."

Finally, the learned trial judge considered the evidence as to how the Socio-Cultural Corpora-tion came to be on part of the land on the western side of parcel 'B' and found as follows:-

"Coming back to parcel 'B' the evidence in the case, as put forward by both par-ties shows that in 1961 the Socio-Cultural Corporation sauntered beyond the area the defendants granted them on lease in 1950 at an annual rent of £30 and tried to grab land adjacent to the area already granted them. They began to bulldoze the adjacent land and the defendants stopped them.

The Socio-Cultural Corporation as the evidence shows, did not on being stopped by the defendants, go to the Chief and Peoples of Okere through Okumagba or any other member of defen-dants' families as they did when they earlier applied for and got land from the defendants. Instead they went to where I will call a 'home ground', that is, the Customary Court, Ajamogha, and sued the defendants for damages for trespass and for restrictive injunc-tion vide Exhibit 20. The defendants unsuccessfully tried to get the suit transferred to the High Court. In the Ajamogha Customary Court, the Socio--Cultural Corporation got an order of injunction 'to restrain the defendants, their servants, workmen and agents from continuing or repeating the said acts of trespass, and also from interfering with and intimidating and obstructing the plaintiffs' workmen, servants or agents in the lawful and peaceful posi-tion (possession) and enjoyment of the land in dispute.'

After getting the order of inte-rim injunction, the next thing that happened was that the Town Planning Authority of the Warri Divisional Council of which Mr. O. N. Rewane was the Chairman and Chief Begho was Secretary, published a notice of inten-tion to 'acquire the land. It would appear the Town Planning Authority in fact acquired the land because they went further to execute a lease of land including the said land to the Socio-Cultural Corporation of which Mr. Rewane and Chief Begho were members. See Ex. 11A.

The Warri Divisional Council Town Planning Authority eventually in Suit No. W/64/68 vide Ex. 11A admitted it had improperly acquired the land and gave it up.

The defendants sued the Socio--Cultural Corporation, Mr. O. N. Rewane and Chief Begho for damages for trespass and for injunction in respect of the land the Corporation tried to grab from them and in a consent judgement the present defendants recovered against the defendants in that suit, the sum of £1,000 as damages and also order for payment by the Socio-Cultural

Corporation of an annual rent of £270 to the plaintiffs in the suit - vide Exhibits 19, 19A and 19B mentioned ear-lier.

Now, if parcel 'B' belonged to Ogitsi family, (1) why did the Socio--Cultural Corporation of which plain-tiffs' 6th witness, Chief Begho, a mem-ber of Ogitsi family is a member, not apply to that family when it wanted land from the said parcel in 1950?
(2) Why did the said witness not apply to the said family in 1961 when his Corporation wanted additional land? (3) Where were the Ogitsi family when he was sued in the suit vide Ex. 19?
(4) Did he tell them of the suit and if he did why did they not do something if in fact the land belonged to them? (5) If he did not tell them, why did he not? There is one common answer to everyone of these questions and it is that parcel 'B' never be1onged and does not belong to Ogitsi family.-"

As for plaintiffs' contention that the defen-dants' ancestors paid tribute to the plaintiffs' fa-mily, the learned trial judge made the following finding of fact:-

"As regards payment of tribute by defendants' ancestors and peoples, I do not believe that they paid any tribute to anyone in Okere. ....'. . . . . .

The claim in Ex. 22 which was a suit commenced in the Ode-Itsekiri Clan Court for recovery of possession of land, plaintiffs therein claimed in respect of land known as Ogitsi Ekpen land situated in Okere Town now in possession of the defendants as a tenant of the plaintiffs' family and also £75 mesne profit. (Underline is mine).

The suit was instituted by (1) Chief Omatsone, (2) Tsegbeyeri Awani and (3) Pegbeti Popo (for and on be-half of the Ekpen Ogitsi family of Okere) against Okumagba of Idimisobo.

In the first place there is nothing to show that the land to which the claim related was not land in the Itsekiri area of Okere but land in the Idimisobo area of Okere. As I have found in this case, the two blocs are separate, evidence in the whole case showing that since the Idimisobos have been in Okere, and the plaintiffs say it is over three hundred years now, they have maintained their identity.

But the interesting point about the case - vide Ex. 22 - is that the Court of first instance found against the plaintiffs there.

The judgement of the Magistrate's Court that heard the appeal in Ex. 22 shows that it appeared the suit was based upon an action brought as far back as 1927 in the then Warri Native Court (Suit No. 788/27) between Nikoro of Okere and Okumagba of Okere. It is said that in that case an order was made that the defendant who is the same as the defendant/respondent in the appeal before the Ma agistrate's Court was to pay to the Ogitsi family who were represented by one Nikoro to whom the plaintiffs/appellants in the appeal in the Magistrate's Court were succes-sors, the sum of £5 as rent and that the land was that of the plaintiffs named therein.

The judgement shows that an appeal was lodged to the Warri Native Court of Appeal and there the Presi-dent stated that 'The Jekri and Sobos have been living together without ques-tion of paying rents to the other and cannot do so now.'

That passage in the said Appeal Court's judgement is important parti-cularly as it was made in a suit ins-tituted in 1927, and especially when one takes into consideration the evi-dence in plaintiffs' case which evi-dence, I, of course, do not believe, that it was in the time of Olaraja Uku who died in 1905 that the Idimisobos ceased to pay tribute.

That the ldimisobos paid any tribute at any time to the Olu or the Ogitsi families runs counter to the sweeping statement that the Jekris and Sobos have been living together without question of one paying rents to the other and cannot do so now. That statement, in my view, supports the evidence in defendants' case that the ldirnisobos never paid tribute to anyone. Exhibit 22 was tendered by the plaintiffs."

(The underlining is ours).

After all these observations, the learned trial judge thereupon dismissed the plaintiffs' claim in its entirety after finding finally as follows: -

"As between the evidence in plaintiffs' case and that in the defendants' case, I accept and believe the evidence in the defendants' case as truthfully stating how Ogitsi family and the defendants' people came to be in Okere area.

I accept and believe the evidence of the defendants that three persons, namely, Idama, Ohwotemu and Sowhoruvwe, first came to Okere and founded various tracts of land as they said, and that all others of the Idimisobo who came to Okere came after the aforementioned three persons had come.

I also accept the evidence of the defendants as to how and when Ogitsi got to the waterside area of Okere and made his settlement there, and as to how the settlement and that of defendants' people grew until they met in Okere.

As I earlier stated, I am satis-fied that the defendants' people are not Ghaminidos in Okere and never paid tribute or rent to anyone in Okere. I am satisfied they were never tenants to anyone. I accept and believe the evi-dence of defendants that the members of Ighegbodu family who went to Odion did so free1y.....

I am satisfied and find as a fact that the land in dispute in this case including the area where rubber plantations are shown on plaintiffs' plan, Exhibit 2, and also where Madam Esale's rubber plantation is, belong to the defendants and that they have been such owners and in possession of the land from the time their ancestors founded the land.

The plaintiffs have failed to prove that Ogitsi family owns the land in dispute, or that Itsekiris of Okere own the land in dispute."

In the appeal to this court against this de-cision based, as can be seen from the extracts quoted above, on definite findings of fact on the definitive and clear-cut points on which issues were joined by the parties, learned counsel for the plaintiffs/appellants (hereinafter referred to as Appel-lants) attacked the findings on the traditional evi-dence and also on the evidence given in support of the various acts of ownership. Learned counsel com-plained that the learned trial judge drew erroneous, unreasonable and unwarranted inferences, prejudi-cial to the Appellants' case with respect to the activities of the body known as the Socio-Cultural Corporation. He also contended that the learned trial judge erred in law in refusing to invoke the provisions of section 45 of the Evidence Act in favour of the Appellants. He referred to the judge's findings on the traditional evidence and submitted that in considering and determining which of the two traditional histories adduced was more probable, the learned trial judge erred in failing to apply the test recognised by law which is, to refer to the facts in recent years as established by evidence. There was also the complaint that the learned trial judge erred in 1aw in superimposing the survey plan (Exhibit 48B) on the survey p1an (Ex. 2) for the purpose of' ascertaining the position of' Madam Esale's rubber plantation and the land in dispute in Suit No. W/111/71 to which the present appel-lants were not parties. The issue of' illegality of the whole trial was also canvassed before us because, according to learned counsel, the judge made reference to the Itsekiri-Urhobo riots of 1951 and the role he (the judge) played as counsel for the Itsekiri people (the present appellants) which facts were not given in evidence by any witness during the proceedings. Finally, learned counsel pointed out that the judge, without justification, relied on this observation about the riots to detract from the weight and authority of the pub-lications (to which the judge referred in his judgement) upon which the appellants relied.

In replying to all these points, learned counsel for the defendants/respondents (herein-after referred to as the respondents) meticulously took us through the evidence adduced by both parties at the trial and submitted that, having regard to the onus placed upon the appellants in a case such as this, the find-ings of fact made by the learned trial judge were amply supported by the evidence. Learned counsel also submitted that these findings show clearly that the appellants have failed to discharge the onus of proof placed upon them and thereby failed to prove their claims before the court.

After considering the arguments urged upon us in support of the submissions made on behalf of the appellants, we share the views of learned counsel for the respondents that the issues involved in the case were mainly issues of fact on which the learned trial judge made definite and specific findings. The law applicable to the facts as found is, of course, now well settled. We have closely examined the record of appeal ourselves in the light of the submissions made before us. We are satisfied that, except for the unnecessary reference, which is no more than an observation, to the 1951 Riots, and for the erroneous descrip-tion of what is clearly a comparison of the pieces of land respectively shown in the two non-transparent survey plans (Ex. 38B and Ex. 2) as a “superimposition”, the various findings of fact made by the learned trial judge are amply suppor-ted by the evidence which he accepted.

With respect to the observation about the 1951 Riots, it is settled law that any wrongful admission of evidence shall not constitute a ground for reversing a decision unless the party complaining can show as well that without such evidence the decision complained of would have been otherwise. (See section 226(1) of the Evi-dence Act and the decision of this court in Ugbe & 4 ors. v. Edigbe & 2 Ors. (unreported) but see SC.736/66 page 15, delivered on 27th February, 1970). It only remains for us to point out that in the case in hand, the appellants have not discharged this further burden. As for the second complaint, we do not see anything wrong in a judge looking at two survey plans tendered before him during the hearing of a case and comparing the boundaries and location of the land in one with those in the other. (See Latinwo v. Ajao (1973) 2 S.C. 99 at page 110, lines 4-25).

As for the law involved, we would like to point out that it is now settled that there are five ways in which ownership of land may be proved. We will now proceed to consi-der each of these five ways in order to see if the findings o£ the learned trial judge can be seen to bring the evidence adduced in the case in hand within the ambit of any of them.

Firstly, ownership of land may be proved by traditional evidence as has been done in the case in hand. In our view, not only was the evidence of the witnesses called by the appellants rightly rejected by the learned trial judge for good and sufficient reasons, we also think that he was right in not attach-ing any weigh to the views expressed in the books cited in support of such traditiona1 evidence. As Lionel Brett, J.S.C. (as he then was), rightly in our view, once pointed out in a learned address given by him at the Univer-sity of Lagos to the Nigerian Association of Law Teachers:

"The courts are not to be hypnotised by the authority of print. The crucial fact is that a book cannot be cross-examined, either as to the opinion expressed, or as to the claims of the author to have special knowledge. If the author is living, there is no reason why he should not be tendered as an expert witness, when this diffi-culty would vanish."

No evidence was adduced to show that any of these books is generally acknowledged either in Nigeria or elsewhere as a standard work or as appropriate authority on the relevant traditional history so as to enable the court to resort, with justifica-tion, to its aid. (See section 58 and 73(2) of the Evidence Act, Cap. 62 and Adedibu v. Adewoyin 13 WACA 191 at page 192). Moreover, none of the authors of these books testified in support of the views stated therein and no explanation was given for this omission. For all these reasons, we share the apprehensions of the learned trial judge about the value or weight of the traditional his-tory as narrated by each of these authors, particu-larly as the authenticity and impartiality of the sources of their narratives cannot, for obvious reasons, be easily ascertained.

Secondly, ownership of land may be proved by production of documents of title which must, of course be duly authenticated in the sense that their due execution must be proved, unless they are produced from proper custody in circumstances giving rise to the presumption in favour of due execution in the case of documents twenty years old or more at the date of the contract (See section 129 of the Evidence Act and Johnson v. Lawanson (1971) 1 All N.L.R. p. 56). As the appellants' case was not based on any document of title, this requirement, in the circumstances of this case, is not particularly apposite.

Thirdly, acts of the person (or persons) claiming the land such as selling, leasing or renting out all or part of the land, or farming on it or on a portion of it, are also evidence of owner-ship, provided the acts extend over a sufficient length of time and are numerous and positive enough as to warrant the inference that the person is the true owner (See Ekpo v. Ita 11 N.L.R. p. 68). It is clear from the judgement in the case in hand that the learned trial judge completely, and for good reason, rejected the evidence in support of the acts of' ownership put forward by the appellants while he accepted those given by the respondents.

Fourthly, acts of long possession and enjoy-ment of the land may also be prima facie evidence of ownership of the particular piece or quantity of land with reference to which such acts are done (See section 45 of the Evidence Act, Cap. 62). Such acts of long possession in a claim of decla-ration of title (as distinct from a claim for tres-pass) are really a weapon more of defence than of offence; moreover under section 145 of the Evi-dence Act, while possession may raise a presumption of ownership, it does not do more and cannot stand when another proves a good title (See Da Costa v. Ikomi (1968) 1 All N.L.R. 394 at page 398). It cannot be gainsaid that, in the present case, not only did the learned trial judge reject the appel-lants' evidence as to possession of any portion of the land in dispute, he also found that the respondents have proved by evidence, which he accep-ted, that they are the owners of the land in dis-pute.

Finally, proof of possession of connected or adjacent land, in circumstances rendering it probable that the owner of such connected or adja-cent land would, in addition, be the owner of the land in dispute, may also rank as a means of pro-ving ownership of the land in dispute. (See section 45 of the Evidence Act, Cap. 62). It must be remembered that the learned trial judge, after com-paring the land shown on the survey plan No. OM3926 (Ex. 48B) with that on the survey plan No. WE2367 (Ex. 2) - a comparison which, as we have pointed out earlier, he erroneously described as a "super-imposition" - found, with justification, that the land described as parcel "A" on Ex. 2 has been in the possession of the respondents, at least from 1960. He also found that members of the respondents' family have always farmed in parcel "A". We also recall that the trial judge also found that the respondents granted a lease of part of the land in parcel "B" of the land in dispute as shown in the survey plan (Ex. 2) to the Socio-Cultural Corporation and to other persons, that they effectively resisted the attempt of the said Corporation to extend their holding beyond the portion granted to them, and that they successfully sued the Corporation, Chief O. N. Rewane, its Chairman and Chief Begho, its Secretary, (as shown in the proceedings in Suit No. w/28/65 Exhibits 19, 19A and 19B) later for damages for acts of trespass committed by the Corporation on the portion unlawfully occupied by them; all these acts are clearly indicative of the fact that the respondents are also effectively in possession of that area described as parcel "B" in the survey plan of the land in dispute. Further- more, the judge rejected the evidence of payment of tribute by the respondents to anybody, evidence which the appellants sought to use to justify the respondents' possession of land outside the dis-puted land. In any case, as learned counsel for the respondents has rightly submitted, for the provisions of section 5 of the Evidence Act to apply, there must be an admission by the respon-dents, or a finding by the trial judge, that the land in dispute was surrounded by other lands belonging to the appellants. Not only was this fact not proved by the appellants, there was also no admission to that effect on the part of the respondents. Furthermore, as the learned trial judge could not, and did not, make any finding on this crucial point, the inference under section 45 of the Evidence Act that the appellants were the owners of the disputed land could not have been drawn. That being the case, we do not see how this particular section of the Evidence Act could have been of any assistance to the appellants.

On the whole, it is sufficient to say that most of the matters canvassed before us were exa-mined meticulously and rejected by the learned trial judge for reasons upon which we cannot improve and to which we do not desire to add except, perhaps, to say that whether taken separately or together, none of the points urged upon us by learned counsel for the appellants would, in our view, justify any interference with the findings and decision of the learned trial judge. Consequently, we are of the view that the appeal has no merit and it is accor-dingly dismissed with costs assessed at N350.00.