

**SUPREME COURT OF NIGERIA**  
15TH JULY, 1994. SC. 80/1991.  
**CORAM:- S. M. A. BELGORE, A. B. WALI, I. L. KUTIGI,**  
**U. MOHAMMED, A. I. IGUH, JJSC**

IJAMA OTIKA ODICHE ..... APPELLANT  
AND  
OGAH CHIBOGWU ..... RESPONDENT

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***EVIDENCE*** - Visit to locus in quo - Purpose thereof - Is to remove minor contradictions - As regards physical condition of the land in dispute.

***LAND LAW*** - Declaration of ownership - Foremost duty of claimant - Is to Describe the land in Dispute - With reasonable Degree of Certainty.

***LAND LAW*** - Ownership - When evidence of numerous acts of ownership - Is deemed not cogent.

***PRACTICE & PROCEDURE*** - Land matters - Failure to present case with required degree of certainty - Whether that case should succeed.

**FACTS**

The Appellant as Plaintiff sued the Defendant/Respondent before a Benue State Area Court Grade 11 for encroaching into the Appellant's land called Ubioko. The Appellant and the Respondent together with their various witnesses testified before the court and concluded their cases. The trial area court visited the locus in quo. Judgment was thereafter delivered in favour of the Appellant.

The Defendant appealed to the High Court. The appellate High Court in allowing that appeal held that the plaintiff's case was at variance with the evidence of his witnesses, and as such he failed to establish his claim. The Plaintiffs appeal to the Court of Appeal was also dismissed. Being dissatisfied, the Plaintiff/Appellant has now appealed to the Supreme Court to determine inter alia, whether the appellate High Court and Court of Appeal rightly dismissed the Appellant's case.

**HELD** (Unanimously dismissing the appeal)

***Need to describe land with reasonable degree of certainty***

1. In a claim for a declaration of ownership or exclusive possession of a piece

of land, the first and foremost duty on the claimant is to describe the land in dispute with such reasonable degree of certainty and accuracy that its identity will no longer be in doubt. (P.70 L.29)

***Evidence of numerous acts of ownership***

2. The mere mention of the name of the land in dispute without stating clearly the area of the land to which the claim is related is not enough description to which evidence can be related. There was not even cogent evidence of tradition or of positive and numerous acts of ownership pointing unequivocally to the fact that the appellant was exercising dominion over the land in dispute. Where the land being claimed is not identified and ascertained, as in this case, the claim will fail and will be dismissed accordingly. (P.72 L. 12)

***Purpose of visit to locus in quo***

3. The purpose of a visit to locus in quo is to eliminate minor contradictions and inconsequential uncertainties as regards the physical condition of the land in dispute; it is not meant to afford a party (as in this case) an opportunity to make an altogether different case from the one he led evidence in support of (P.72 L.21)

***Failure to present case with required degree of certainty***

4. The appellant has woefully failed to present his case with the degree of identity and certainty required under the law. Both the High Court and the Court of Appeal are right in reversing the judgment of the Trial Area Court and dismissing the appellant's claim. The decisions of the two lower courts are hereby further confirmed. (P.72 L.25)

**NOTABLE POINTS OF INTEREST**

**BELGORE JSC**

***1. Standard of land description needed towards establishing title***

“It is a well established principle in land cases that where a party makes claim on land, that land must be identified positively and without ambiguity. The land must be so described that the Court will be certain and a surveyor would have no problem identifying its coordinate monuments ..... This issue of Proof of identity of land in dispute is sine qua non to establishing a case of title to land. (P. 72 L.37)

**IGUHJSC**

***2. Onus of proof of land identity lies on the Plaintiff***

The law is settled by a long string of authorities that the onus of proof lies on the plaintiff who seeks a declaration of title to land to establish with certainty and precision and without inconsistency the area of land to which his claim relates. It is clear in the present appeal that the identity of the land claimed by the appellant was not established before the court. (P.74 L.29)

**REPRESENTATION**

Mr. Fred Agbaje with Jide Agbaje for the Appellant

Mr. J.A Igonah for the Respondent

**CASES REFERRED TO**

Omorie v. Idugiemwanye (1985) 2 NSCC vol. 16 838  
 Olufosoye v. Olorunfemi (1989) 1 NSCC vol. 20 p. 21 at 32  
 Onibudo v. Akibu (1982) 7 SC. 60 at 101 - 102  
 Iriri v. Erhurhobara (1991) 2 NWLR (Pt. 174) 254.  
 Afolayan v. Ogunrinde (1990) 1 NWLR (Pt. 127) 369 at 393  
 Udeze v. Chidebe (1990) 1 NWLR (Pt. 125) 141 at 144  
 Nwadike v. Ibekwe (1987) 4 NWLR (Pt 67)  
 Ayanwale v. Atanda (1988) 1 NWLR (Pt. 68) 22  
 Ibuluwa v. Benebo (1976) 6 SC. 97  
 Baruwa v. Ogunshola 4 WACA 159  
 Udofia v. Afia 6 WACA 216  
 Okosun v. Johnny Aigbedion (1972) 1 All NLR (Pt. 2) 370  
 Kojo 11 v. Bonsue (1957) 1 WLR 1223  
 Oluwi v. Eniola (1967) NMLR 339  
 Kwadzo v. Adjei X WACA 274  
 Ezeokeke v. Uga (1962) 1 All NLR 482  
 Onotaire v. Onokpasa (1984) 12 SC. 19  
 Amata v. Modekwe (1954) XIV WACA 580  
 Okorie v. Udom (1962) 5 FSC 162  
 Onwuka v. Ediala (1989) 1 NWLR (Pt. 70) 325  
 Olusanmi v. Oshasona (1992) 6 NWLR (Pt. 245) 22, 23 and 241  
 Arade v. Asanlu (1980) 5 - 7 SC. 78  
 Baruwa v. Ogunsola (1938) 4 W.A.C.A. 159  
 Agbonifo v. Aiwereoba (1988) 1 N.W.L.R. (Part 70) 325  
 Onwuka v. Ediala (1989) 1 N.W.L.R. (Part 95) 182  
 Olusanni (no. 2) (1987) 2 N.W.L.R. (Part 57) 366 at 371

Makanjuola v. Balogun (1989) 3 N.W.L.R. (Part 108) 122

### LEAD JUDGMENT BY WALIJSC

When this appeal came up for hearing on 18<sup>th</sup> April 1994 and after listening to learned counsel on both sides emphasizing on issues raised in their respective reliefs already filed, I dismissed the appeal and reserved giving my reasons for doing so to today. I shall now proceed to state them.

The case started from Onyedega-Ibaji, Grade II Area Court sitting at Onyedega-Ibaji, Benue State of Nigeria where the present appellant as plaintiff sued the present respondent as defendant claiming as follows-

*"I sued the defendant because of his encroachment into my land called Ubioko".*

The plaintiff in his evidence testified as follows on the description and identity of the land in dispute-

*"The area called Anebiuko is our land, it is a land of Ofoko family from time immemorial and our people have been farming there. The land was first founded by my own clan Ofoko. There is a valley called Okpe Ofina which forms a boundary between my land and his land called Ofina. The valley itself which forms our boundary belongs to the defendant. My own land Ane Ubioko is situated on the East when standing in the valley called Ofina while the defendant's land is situated on the West. The high land of my own land Ane Bioko was allocated to the Youth at Ayike five years ago in which they built their church. I also allocated a portion of that land to Udiokwu Odiakwu for building and he constructed his house last year. This year the defendant lay claim to the area which is the high land after the valley that marks our boundary."*

The plaintiff called three other witnesses in support of his claim. The defendant, after repudiating the plaintiff's claim, presented his case as follows-

*"My land by name Ofiana stretches down to Aji Aneje which is the boundary between the Orube family and myself. The said Aji Aneje is a valley owned by Orube people. I also share boundary with Ubailo clan and their own Land is situated on the East while my own is situated on the West. I have boundary with the plaintiff at Eyo stream and Eyo stream belongs to the plaintiff. The high land after the valley called Ofina belongs to me. It was first founded by one late Okeke and he has only a female daughter. There are some women*

68 Odiche v. Chibogwu (1994) 12 KLR Wali JSC  
whom he allocated the land for planting rice. Those women were still there.  
Their names are Ejinagwu male, Olulu, ale, ime (f) Ogeme female. Those are  
the people farming in Ofiana land.”

The defendant also called two witnesses to support his case.

After the parties had concluded their respective cases, the trial Area  
5 Court conducted a locus in quo at which both the plaintiff and the defendant  
were present. Judgment in the case was then reserved to 17th September  
1985.

On the 17th December 1985, the trial Area Court delivered its consid-  
ered judgment in favour of the plaintiff.

10 The defendant appealed against the judgment to the appellate divi-  
sion of Benue State High Court sitting at Idah.

Both parties were represented by counsel who argued their respec-  
tive cases. In allowing the appeal, the High Court opined that-

15 “It is our view that the respondent’s case in the court below was at  
variance with the evidence of his witnesses, and as such he failed to estab-  
lish his claim. The court should have dismissed his claim. In the result, we  
allow the appeal, set aside the decision of the trial court and dismiss the  
respondent’s case in the court below.”

Aggrieved by the decision of the appellate High Court, the plaintiff  
20 appealed to the Court of Appeal, Jos Division.

In the lead judgment of the Court of Appeal delivered by Mukhtar JCA. with  
which both Ndoma-Egba JCA and Adio JCA (as he then was) agreed, the  
plaintiff’s appeal was dismissed and the decision of the appellate High Court,  
Benue State was affirmed.

25 The plaintiff has now further appealed to this court, and from now  
onwards, the plaintiff will be referred to as the appellant while the defendant  
as the respondent.

Learned counsel involved in the appeal filed and exchanged briefs of  
arguments.

30 In the brief filed by learned counsel for the appellant the following 6  
issues were raised for determination-

“1. Whether having regard to the overwhelming evidence of the  
Appellant (plaintiff) at the trial Area Court, the High Court and the Court of  
Appeal were right to have dismissed the appellant’s case.

35 2. Was the Court of Appeal right in its conclusion to the effect that  
“The Learned Trial Court failed to identify the issues in dispute” (p.49).

3. Was there any Contradiction in the appellant’s case?

4. Even if there was any Contradiction (which is denied), is such  
Contradiction material to the appellant’s (Plaintiff) case?

5. *What is the legal and factual effects of the Trial Area Court visit to locus in quo?*

6. *Was the Trial Area Court right to have given judgment in favour of the plaintiff (now appellant)?*

Learned counsel for the respondent also formulated in his brief, the following two issues-

“1. *Whether having regard to the obvious contradictions in the case for the Appellant and his failure to properly identify the land in dispute, the Court of Appeal was wrong in upholding the decision of the High Court dismissing the Appellant’s case before the trial Area Court.*

2. *Whether the visit of the trial Area Court helped it in any way to identity the issues before arriving at its decision and the effect of the said visit on the case for the Appellant which had already failed by his oral evidence in Court”.*

Issue 1 and 2 of the appellant’s brief are covered by ground 1 of the grounds of appeal: issues 3 and 4 by ground I and issues 5 & 6 ground 2. Issue 1 of the respondent’s brief covers issues 1, 2, 3 and 4 of the appellant’s brief while issue 2 covers issues 5 and 6.

In arguing issues 1 and 2, learned counsel for the appellant submitted that the Court of Appeal committed grave error in upholding the judgment of the High Court in its appellate jurisdiction when it failed to consider the fact that title and ownership of the land in dispute. He contended that out of the five ways of establishing title and ownership of land, the appellant has proved three. He further submitted that the trial area court really and specifically identified the issues in dispute between the parties and that its judgment was based on the evidence led before it. Learned counsel said that both the High Court and the Court of Appeal committed error when they interfered with the in support:- OMOREGIE & ORS v. IDUGIEMWANYE & ORS. (1985) 2 NSCC VOL. 16838; OLUFOSOYE v. OLORUNFEMI (1989) 1 NSSC VOL. 20 p. 21 at 32 and ONIBUDO v. AKIBU (1982) SC 60 at 101-102.

On issues 3, 4 and 5 which deal with the contradictions in the evidence and the identity of the land in dispute, learned counsel submitted that there was no contradiction in the evidence adduced by the appellant, and even if there was, it is insignificant to have any effect on the appellant’s case as it relates “*to nomenclature (names)*” but “*Not the identity of the land itself*”. He also submitted that the whole purpose of the visit to locus in quo by the trial court was to clear any ambiguity which might

have arisen in connection with identity of the land in dispute. he contended that the Court of Appeal ought to have had recourse to the evidence of recent possession by the appellant to resolve any contradiction or conflict as enjoined by his Court in IRIRI v. ERHUHIBARA (1991)2  
 5 NWLR (PT. 174). Learned counsel also cited the case of AFOLAYAN v. OGUNRINDE (1990) NWLR (PT 127)369 at 393.

On issue 6, it was the submission of learned counsel that having regard to the evidence adduced by appellant, the Court of Appeal was in grave error to have affirmed the decision of the High Court that allowed the  
 10 appeal by the respondent (defendant) since, further contended by learned counsel, none of the findings made by the trial court on the evidence adduced could be described as perverse to warrant such an interference. He cited and relied on the following decisions to buttress his submission:- UDEZE v. CHIDEBE (1990) 1 NWLR (PT. 125) 141 at 144; NWADIKE v. IBEKWE (1987)  
 15 4 NWLR (PT. 67) and AYANWALE v. ATANDA (1988) 1 NWLR (PT. 68) 22. He finally urged this court to allow the appeal and restore the judgment of the trial Area Court.

In reply to the issues raised and argued by the appellant as raised in his brief, learned counsel for the respondent made the following submissions:-  
 20 1. That having regard to the evidence adduced, the contradiction between the appellant's evidence and that of his witnesses are so glaring and material for any reasonable tribunal to uphold the trial court's decision based on it. He referred to UDEZE v. CHIDEBE (1990) 1 NWLR (PT. 125) 141 and IBULUWA & ORS. v. BENEBO (1976) 6 SC. 97 in support.

25 2. That the visit to the locus in quo by the trial court added more to the difficulty of the appellant as regards the identity of the land he was claiming.

He urged the court to dismiss the appeal.

In a claim for a declaration of ownership or exclusive possession of a  
 30 piece of land, the first and foremost duty on the claimant is to describe the land in dispute with such reasonable degree of certainty and accuracy that its identity will no longer be in doubt: BARUWA v. OGUNSHOLA & ORS. 4 WACA 159; UDOFIA v. AFIA 6 WACA 216 and OKOSUN EPL & ANOR. v. JOHNNY AIGBEDION (1972) ALL NLR (PT. 2) 370. In Area Courts in the  
 35 Northern States this is done by the claimant stating:-

1. *the boundaries of the area and location of the land he is claiming.*
2. *his neighbours and their names on all sides of the boundaries.*

*Where some of the boundaries are marked by river, stream or road, names of them.*

3. any other physical features on the land like rocks, buildings, trees etc. that may assist in its identification.

Having done that, the court will call upon him to substantiate his claim by calling witnesses in line with (1), (2) and (3) above.

The appellant, while giving evidence gave the description of the land he is claiming as follows: 5

*“The area called Anebiuko is our land, it is a land of Ofoko family from the immemorial and our people have been farming there. The land was first founded by my own clan Ofoko. There is a valley called Okpe Ofina which forms a boundary between my land and his land called Ofian. My own land called Ane Ubioko is situated on the East when standing in the valley called Ofian while the defendant’s land situates (sic) on the West. The high land of my own land Ane Bioko was allocated to the Youth at Ayike five years ago in which they built their church. I was the one that allocated a portion of that land to Udiokwu Odiakwu for building and he constructed his house last year.”* 10 15

At the locus in quo, the appellant gave the description of the land he is claiming as follows:

*“Plaintiff started showing us his land from Qua Iboe Church compound at Ayeke. Behind the Qua Iboe Church building at the North East there is an Ore tree and a valley. Plaintiff said the Ore tree belong to his clan called Ofoko adding that the valley behind the Oro which stretches to the North East and the Eastern side marks the boundary between his clan and Ubailo clan. At the Northern side is boundary with Atokona clan. Plaintiff said Qua Iboe Church and the School are within his land. Plaintiff said Qua Iboe Church land was sought from his clan before the Church was built. He showed us a document dated 10/10/62 which was the request of land allocation for the church building by the Qua Iboe Church members adding that a copy of the same was with Unale Church. Plaintiff said the church and the school have a boundary. After the School compound is the fellowship (Youth) Church building. Udiokwu Udiakwu alias Udiokwu Egwuma has a building by the fellowship. Plaintiff presented a written agreement of plot allocation between his clan and Udioku Egwuma dated 15/2/84. In the agreement written thus “that Ofoko clan of Ayeke do hereby under customary power, has allocated space of land measuring 237ft by 100ft at Ojomaja opposite the Primary School Ayeke to Egwuma Udiokwu of Ajomaja Ayeke.”* 20 25 30 35

After Egwuma Udiokwu is the building of Iledegwu where the complainant picked out some dried cassava tree. No life cassava was standing

*or remaining. We advanced towards West and arrived at Ofian valley. The plaintiff said the stream within Ofian valley is for the defendant. Plaintiff said he owns the land and not the stream”.*

The only features mentioned by the appellant in his evidence by  
5 which the land could be identified are Okpe Ofina valley, a Church building  
and a house; whereas at the locus in quo, he added the following features – an  
Oro tree, boundary between the land of Atokona clan on the Northern side,  
boundary with Ubailo clan on the North-Eastern and Eastern sides and a  
school building on the land.

10      The evidence given by PW1, PW2 and PW3 did not help the  
appellant’s case also. None of these witnesses gave evidence on the descrip-  
tion and identity of the land in dispute. The mere mention of the name of the  
land in dispute without stating clearly the area of the land to which the claim  
is related is not enough description to which evidence can be related. There  
15 was not even cogent evidence of tradition or of positive and numerous acts of  
ownership pointing unequivocally to the fact that the appellant was exercis-  
ing dominion over the land in dispute. See KOJO II v. M BONSUE (1957) 1  
WLR 1223 particularly at 1226. Where the land being claimed is not identified  
and ascertained, as in this case, the claim will fail and will be dismissed accord-  
20 ingly. See OLUWI v. ENIOLA (1967) NMLR 339.

The purpose of a visit to locus in quo is to eliminate minor contradic-  
tions and inconsequential uncertainties as regards the physical condition of  
the land in dispute; it is not meant to afford a party (as in this case) an oppor-  
tunity to make an altogether a different case from the one he led evidence in  
25 support of.

The appellant has woefully failed to present his case with the degree  
of identity and certainty required under the law. Both the High Court and the  
Court of Appeal are right in reversing the judgment of the Trial Area Court and  
dismissing the appellant’s claim. The decisions of the two lower courts are  
30 hereby further confirmed.

The respondent is awarded N1000.00 costs in this appeal against the  
appellant.

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#### BELGORE JSC

35      I agree with the reasons for judgment of my learned brother, Wali,  
J.S.C. I also dismissed this appeal on 18th April 1994 and reserved my reasons  
to today.

It is a well established principle in land cases that where a party makes  
claim on land, that land must be identified positively and without ambiguity.

The land must be so described that the court will be certain and a surveyor would have no problem identifying its coordinate monuments. *The old cases of KWADZO VS ADJEI X WACA 274; EZEKEKE VS UGA (1962) 1 All NLR 482; ONOTAIRE VS ONOKPASA (1984) 12 SC. 19; AMATA & ORS. VS MODEKWE & ORS. (1954) XIV WACA 580 and OKORIE VS UDOM & ORS. (1962) 5 FSC 162 have been emphatically adopted in other cases that*” this issue of proof of identity of land in dispute is sine qua non to establishing a case of title to land. (see *ONWUKA VS EDIALA*) (1989) 1 NWLR (Pt 96) 183. 184; *AGBONIFO VS AIWERIOBA* (1988) 1 NWLR (Pt 70) 325; *OLUSANMI VS OSHASONA* (1992) 6 NWLR (Pt 245) 22, 23, and 24). The appellant in this case failed to identify clearly the land he claimed and the defect, fundamental as it is, could even not be rectified by any visit to locus in quo and no surveyor could have made any meaningful identity of the land in dispute.

It is for the foregoing reasons and fuller reasons in the reasons for judgment of my learned brother, Wali, J.S.C., that I dismiss this appeal on 18th day of April, 1994 and awarded costs of N1,000.00 in favour of the respondent against the appellant.

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### KUTIGI JSC

This appeal was dismissed after hearing on 18th April, 1994 and adjourned to today for me to give my reasons for so doing.

The record clearly shows that the appellant claimed title to a portion of land called “*Ane-Ubioko*”. He gave evidence himself and called three other witnesses.

P.W.2 testifying on page 6 lines 30-33 said-

“*I know the land in dispute. It is called OFINA. The plaintiff’s land is called Ubioko and the defendant’s land is called Ofina. The boundary between the plaintiff and the defendant is Ofian valley which is for the defendant.*”

P.W.3 also testifying said on page 7 line 8-

“*The land in dispute is called Ubiojoga*”

And further down from lines 16-17 he said-

“*The area in dispute is called Ofina valley which is the boundary between their land.*”

P.W.1 apparently said nothing about the land in dispute.

The appellant’s evidence was no doubt at variance with the evi

dence of these two witnesses (P.W. 2 & 3) and as such completely failed to establish his claim to “*Ane - Ubioko*” land which he claimed. Both witnesses said the land in dispute was “*Ofina*” and that “*Ofina*” land belonged to the respondent. In short the identity of the land in dispute was never established (see KWADZO v. ADJEI 10 WACA 274; ARADE v. ASANLU (1980) 5 - 7. I think both the High Court and the Court of Appeal were right when they dismissed appellant’s claim.

It is for the above reason and the fuller reasons stated in the Reasons for Judgment just delivered by my learned brother Wali J.S.C. which I read before now that I dismissed the appeal when I did. I endorse the order for costs.

### MOHAMMED JSC

I dismissed this appeal on 18th April, 1994, and announced that I would give my reasons for doing so today. Now, after I have gone through the dismissing the appeal on 18th April, 1994, I find that he had covered all the salient issues raised in this appeal. I have nothing more to add over the reasons my learned brother has advanced in giving his opinion on this appeal. I will adopt those reasons as mine.

This appeal is without any merit at all and ought to be dismissed as had been done on 18th April, 1994. I also award N1,000.00 costs in favour of the respondent.

### IGUH JSC

On the 18th April, 1994, I dismissed this appeal and then indicated that I would give my reasons for so doing today. I have since had the advantage of reading in draft the reasons for judgment just read by my learned brother, Wali, J.S.C. I entirely agree with the reasoning and conclusions therein.

The law is settled by a long string of authorities that the onus of proof lies on the plaintiff who seeks a declaration of title to land to establish with certainty and precision and without inconsistency the area of land to which his claim relates. See Baruwa v. Ogunsola (1938) 4 W.A.C. A 159, Agbonifo v. Aiwereoba (1988) 1 N.W.L.R. (part 70) 325, Onwuka v. Ediala (1989) 1 N.W.L.R. (part 95) 182, Olusanmi v. Oshasona (1992) 6 N.W.L.R. (part 245) 22 at 36; Awote v. Owoduni (No. 2) (1987) 2 N.W.L.R (Part 57) 366 at 371, Ezeokeke v. Uga and others (1962) 1 All N.L.R (Part 3) 482 and Makanjuola v.

Balogun (1989) 3 N.W.L.R (Part 108) 122.

It is clear in the present appeal that the identity of the land claimed by the appellant was not established before the court. It is also apparent from the record of proceedings that the appellant's claim would appear to relate to some land different from the one his witnesses testified upon. It seems to me plain that in the face of the obvious and apparent serious contradictions in the case for the appellant before the trial Area Court, it cannot be said that he properly identified the land in dispute to entitle him to the reliefs he claimed. I therefore agree that the Court of Appeal was fully justified in upholding the decision of the appellate High Court which dismissed the appellant's claim before the trial Area Court.

It was for the above reasons and for the more detailed reasons contained in the lead "*Reasons for Judgment*" of my learned brother, Wali, J.S.C. that I dismiss the appeal with costs in favour of the respondent as then decreed.

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