

SUPREME COURT OF NIGERIA
6TH JUNE, 1997. SC. 199/1992
CORAM:- S.M.A.BELGORE, M.E. OGUNDARE, U.MOHAMMED,
S. U. ONU, Y. O.ADIO, JJSC.

CHIEF ADEYEMI LAWSON	1ST & 2ND
LAWSON & CO. (NIG.) LTD.	DEFENDANTS/APPELLANTS
AND	
CHIEF AYODELE AJIBULU	PLAINTIFF/RESPONDENT
HON. COMMISSION FOR LANDS AND HOUSING, OGUN STATE	3RD & 4TH
ATTORNEY-GENERAL & COMMISSIONER FOR JUSTICE, OGUN STATE	DEFENDANTS/ RESPONDENTS

LAND LAW - Title - Pleadings - Failure to plead root of title - Is fatal - As production of title documents per se - Is not sufficient proof of title.

LAND LAW - Title - Proof of plaintiff's title - Cannot be attained by virtue of a mistake - Nor even by an admission in defendants' pleadings - Since plaintiff must rely on the strength of his case.

LAND LAW - Title - Burden of proof - Both lower court's having erroneously placed burden of proof on the defendants - Their concurrent findings will be set aside as being perverse.

LAND LAW - Trespass - Where appellants were already in possession - The plaintiff who entered the land on the ground of sale to him - Is the trespasser.

LAND LAW - Trespass and injunction - Where plaintiff's claim for damages for trespass and title fail - His claim for injunction will also be dismissed.

LAND LAW - Acquisition of land by government - Provision that it must be for public purpose - Does not exclude government from involving the private sector - Towards the attainment of such purposes.

LAND LAW - Locus standi - Acquisition of land by government - Where plaintiff failed to prove his title - He has no locus standi to challenge the validity of the acquisition.

PLEADINGS - Failure to plead a fact - Evidence in support of plaintiff's claim - Where not pleaded - Goes to no issue.

FACTS

The plaintiff/respondent, a legal practitioner, bought a piece of land from the Aina Ala Adeniyi families of Agbara village, Ogun State. He later noticed that the 1st defendant/appellant was encroaching on the land. 1st defendant approached plaintiff to sell the land to him but he refused. Subsequently, the land was acquired by the Ogun State Government and released to the 2nd defendant (which is 1st defendant's company) for development. Plaintiff instituted this action against the 1st defendant alone and later joined the other defendants. Appellants were already in possession at the time plaintiff bought the land. Plaintiff failed to prove his vendors' root of title but merely relied on title documents and mistaken reference by the 3rd and 4th defendants to the land as plaintiff's land. Plaintiff claimed inter alia, entitlement to Statutory Certificate of Occupancy and a declaration that the purported acquisition of the land is null and void.

The trial court found in favour of the Plaintiff. Defendants appeal to the Court of Appeal was dismissed as that court upheld the trial court's decision. 1st and 2nd defendants have further appealed to the Supreme Court raising 2 issues.

ISSUES FOR DETERMINATION

(1) Did Plaintiff prove his title to the land in dispute? and (2) Is the acquisition of the land by the Ogun state Government valid?

HELD (Unanimously allowing the appeal per lead judgment of **OGUNDARE JSC**)

Failure to plead root of title

1. I pause here to observe that there is no averment in the above pleadings that Aina Ala Adeniyi families owned the land they conveyed to Plaintiff nor how they came to own the land. In effect, there is nothing in Plaintiff's pleadings that he acquired title to the land in dispute from one whose ownership of the land was established. Production of documents of title alone is not sufficient to discharge the onus on a plaintiff to prove the title he claims; he must go further to trace his root of title to one whose ownership of the land has been established. (p. 1148 A)

Failure to plead a fact - Evidence thereon goes to no issue

2. This is all the evidence in support of Plaintiff's claim to title. Idowu's and Ajose's evidence to the effect that

"The original owner of this land is Aina Ala"

goes to no issue as no such fact was pleaded. It is not in evidence how Adeniyi family who joined in executing the conveyance to Plaintiff came into

the picture. In any event, the totality of the evidence of Plaintiff and Ashimi Ajose can hardly be described as proof of Plaintiff's title to the land. (p.1148 H)

Proof of title - Cannot be by an admission in defendants' pleadings

3. Reading the said statement of defence as a whole, reference to the land in dispute as "Plaintiff's" is obviously a mistake by the 3rd and 4th Defendants. This mistake would however not relieve the Plaintiff of discharging the onus on him to prove his title, relying on the strength of his case. Even if the phrase "Plaintiff's land in dispute" is taken as an admission by 3rd and 4th Defendants, it is still of little help to the Plaintiff who had the onus to prove his title by evidence and not by admissions in the defendants' pleadings - Bello v. Eweka (supra).¹ (p. 1149 G)

Erroneous placing of burden of proof on defendants

4. With respect to their Lordships of the Court below, they fell into the same error that the learned trial Judge made. They all seemed to put the burden on the Defendants, particularly the Appellants, to disprove Plaintiff's claim to title. This approach was not in line with all decided cases on the point. The conclusion I reach is that the concurrent finding of the two Courts below on title to the land in dispute being in the Plaintiff is perverse and must be set aside. I unhesitatingly dismiss Plaintiff's claim (1) for declaration. (p. 1152 D)

Trespass - Where appellants were already in possession

5. Going by this view of the evidence of Chief Lawson, it must follow that the Appellants were in possession of the land in dispute ever before the said land was sold to the Plaintiff by the Aina Ala and Adeniyi families in 1975. When he made a fence round the land and affixed a signboard, he was trespassing on land in possession of the Appellants. He was the trespasser and not the Appellants. In any event, as both Plaintiff and the Appellants claimed to be in possession of the land, to succeed in trespass Plaintiff must show better title to the land. This he failed to do. Had the two Courts below properly directed themselves on the evidence and the law, they would not have found, as they did, that Plaintiff's claim in trespass succeeded. (p. 1153 A)

Trespass and injunction

6. The conclusion I reach is that Plaintiff's claim in trespass ought to have been dismissed. And following the failure of his claims for title and damages for trespass, his claim for injunction ought also to have been dismissed. I

¹ Reported in (1981) 1 SC 101

hereby dismiss the claims. (p. 1153 F)

Acquisition of land by government

7. Having regard to the purpose for which the land was being applied by the 2nd Appellant before and after the acquisition it would appear to me that had the Courts below properly directed themselves on the definition of " public purpose" in the Law, they would not have concluded, as they did, that EREKU'S case applied. Paragraphs (f) - (h) of the above definition allow Government to acquire land required for the purposes stated therein. The carrying out of such purposes need not be by the Government itself. It is under similar provisions in Federal Statutes such as the Public Lands Acquisition Act (now replaced by the Land Use Act) that the Federal Government acquires land compulsorily and leases same to oil companies in furtherance of their oil prospecting activities. It has not been suggested that such acquisitions were not for public purpose. The prevalent practice of Governments acquiring land compulsorily and leasing same to developers for housing estate, economic, industrial or agricultural development must be seen in the same light, that is, the involvement of the private sector in the orderly development of both the urban and rural areas. EREKU's case is an example of naked exercise of power which this Court deprecated in that case. Such was not the case here. (p. 1158 G)

Land law - Locus standi

8. Having held earlier in this judgment that the plaintiff failed to prove his title to the land in dispute it follows that he lacked the locus standi to challenge the validity of the acquisition, by the Ogun State Government, of the land in dispute. (p. 1159 D)

NOTABLE POINT OF INTEREST

BELGOREJSC

G 1. *Claim for title to land - What plaintiff must prove*

It is too late in our law to disregard onus probandi. The person that asserts must prove and the fact that the defendant never proves or even remains silent will not discharge the burden on the plaintiff. The proof required is the evidence based on facts pleaded in the statement of claim: that evidence must be clear, cogent and directly pointing at the issue in dispute so that the plaintiff's case is preponderantly believed and preferred. In an action for declaration of title to land, several authorities have laid down the burden of proof the plaintiff's must discharge [Kodilinye v. Odu 11 WACA 336; Atuanya v. Onyejekwe & Anor. (1975) 3 SC. 161, 168; Ohiaeri v. Akabeze (1992) 2 NWLR (pt. 221) 1].

Thus the primary responsibility of the plaintiff is to prove his case and not rely on the weakness of his adversary's case. Where both parties rely on historical evidence, there must be cogent evidence of how the land devolved from generation to generation; and relying merely on one family as vendor may not be enough unless that family proffered evidence of how they came about the land. (p. 1159 F)

B

REPRESENTATION

Chief E. S. Dare Babalola, for the Plaintiff/Respondent

Chief R. Clarke with A. Oladeji for Appellants

C

CASES REFERRED TO

Atuanya v. Onyejekwe (1975) 3SC. 161 at 168).

Elias v. Omo-Bare (1982) 5SC. 25.

Onibudo v. Akibu (1982) 7SC. 60 at 84-85

Belo v. Eweka (1981) 1 SC. 101

Aromire v. Awoyemi (1972) 2 SC. 1 at 11.

Idudun v. Okumagba (1976) 9/10 SC. 227 at 246-250

Baridam v. The State (1994) 2 KLR 1

Okolo v. Uzoka (1978) 4 S.C. 77 at 87

Ajibona v. Kolawole (1996) 12 KLR (Pt 46) 2048

Abisi v. Ekwealor (1993) 9 KLR 99

Amakor v. Obiefuna (19) 3 SC. 67

Adimora v. Ajufo (1988) 3 NWLR (part 80) 1.

D

E

STATUTE & RULES REFERRED TO

Supreme Court Rules O. 2 r. 10

Public Lands Acquisition Law Cap 105 Laws of Western State of Nigeria 1958 s. 2

F

LEAD JUDGMENT BY OGUNDARE JSC

The Plaintiff, Chief A. A. Ajibulu who is a legal practitioner, in 1975 bought a piece or parcel of land measuring 15.05 acres from the Aina Ala Adeniyi families of Agbara Village. He affixed on the land a signboard being his names as the owner. He later noticed that Chief Adeyemi Lawson was encroaching on the land. Chief Lawson approached him to sell the land to the latter but Plaintiff refused. The land was later acquired by the Ogun state Government and released to Chief Lawson's company for development. Plaintiff then instituted this action, first against Chief Lawson alone and, at subsequent states in the proceedings, he joined chief Lawson's Company - Lawson

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and Company (Nigeria) Limited as 2nd Defendant and the commissioner for Lands and Housing Ogun State and the Attorney-General and Commissioner for Justice, Ogun State as 3rd and 4th Defendants respectively.

In his final pleadings that went to trial, Plaintiff averred, inter alia, as follows:

B *"5. The Plaintiff is the owner of the parcel of land measuring 15.05 acres situate lying and being at Agbara Village near Igbesa, Egbado Division of Ogun State of Nigeria and parallel to Lagos-Badagry Road.*

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C *7. By virtue of an instrument dated the 5th of March, 1975 and registered as No. 51 at page 51 in Volume 1692 at the Lands Registry at Ibadan (and now at Abeokuta) the said piece of land vested in the Plaintiff as the Free-hold owner of it and he was put in possession of same.*

D *8. The Plaintiff was put in possession by his Vendors who were the accredited representatives of Aina Ala Adeniyi families of Agbara Village in Egbado Division of Ogun State of Nigeria.*

9. That since the sale to the plaintiff, the plaintiff had been exercising rights of ownership without any interference or disturbance whatsoever until it was discovered that the Defendants had been encroaching on the said piece of land.

E *10. That 1st and 2nd defendants forcibly entered into the said piece of land destroyed the sign board bearing the names of the plaintiff which was installed on the land and started to carry out survey work without the consent of the plaintiff between the end of 1976 and early part of 1977.*

F *11. The Plaintiff wrote letter of warning to the 1st Defendant to desist from his act of trespass but the 1st defendant refused to heed the warning.*

G *12. In March 1977 the 1st Defendant invited the plaintiff to his Grailand Hill residence two times as contained in two letters dated 3/3/77 and 18/3/77 respectively and he offered to compensate the plaintiff for the act of trespass by paying him (plaintiff) a sum of N200.00 per acre for the whole piece of land in dispute but the plaintiff refused.*

13. The Ogun State Government and 3rd and 4th defendants claim ownership of the said piece of land and purported to have leased same to the 2nd defendant without the consent of the plaintiff.

H *13a. The plaintiff was not served with any notice personally or otherwise by the 3rd and 4th defendants or Ogun State Government of any intention to acquire the piece of land in dispute compulsorily or otherwise.*

14. The 2nd defendant had unlawfully leased the said piece of land to a company known as Food specialities (Nigeria) Limited for over one

million Naira.

15. *The 2nd defendant had not been using the said piece of land for public purpose but for its own private profit making purposes."*

He claimed, as per paragraph 18, the following:

"(1) *Declaration of entitlement to Statutory Certificate of Occupancy of that piece or parcel of land lying situate and being at Agbara Village near Igbesa, Egbado, Ogun State and more particularly described and marked 'RED' on the plan attached to Deed of Conveyance Registered as No. 51 at page 51 in volume 1692 of the Lands Registry at Ibadan (now Abeokuta).*

(2) *N2,000.00 (two thousand Naira) damages for trespass committed on the piece of land by the defendants and their agents servants and privies.*

(3) *An injunction restraining the defendants, their servants privies and agents from committing further act of trespass upon the said piece of land.*

(4) *Declaration that the purported acquisition of the said piece of land under the Public Lands Acquisition Law Cap. 105 Laws of Western Nigeria, 1959 by the 3rd and 4th defendants is incompetent, unlawful, null and void for failure to satisfy sections 8(1) and 9 of the Public Lands Acquisition Law, 1959.*

(5) *Declaration that the purported acquisition of the piece of land in dispute under Public Lands Acquisition Law, Cap. 105 Laws of Western Nigeria 1959 for public purpose from a private individual i.e. the plaintiff and later leased to another private company i.e. 2nd defendant by the 3rd and 4th defendants and Ogun State Government for private profit making purpose does not come within the purview of the Public Lands Acquisition Laws of Western Nigeria 1959 and therefore it is unconstitutional, ultra vires, null and void.*

(6) *Setting aside the said acquisition in respect of the land in dispute."*

The 1st and 2nd Defendants filed a joint Defence the penultimate paragraphs of which read:

"3. *The 1st and 2nd defendants deny paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 14 and 15 of the Amended Statement of claim and put the plaintiff to a strict proof thereof.*

4. *The 1st and 2nd defendants aver that the 1st defendant acting as agent of 2nd defendant acquired 51 parcels of farmland comprising and making up a total area of 429 acres from several farmers owners for a total sum of N91,416.00 between February 1973 and April, 1973.*

5. *On the purchases of each parcel of farmland, the 1st and 2nd defendants were put into possession of all the aforementioned parcels of farmlands and in March 1973, the 1st and 2nd defendants instructed their surveyor A. O. Adebogun to go on the land and survey all the 51 parcels of farmlands.*

B 6. *The surveyor accordingly surveyed all the parcels of land in April, 1973 and consequently produced a survey plan dated 27th April, 1973.*

7. *The said survey plan was duly counter-signed by the surveyor-General of Western Nigeria on the 24th of May, 1973.*

C 8. *The aforementioned purchases of the 51 parcels of farmlands were duly ratified and conveyed to the 1st defendant, who was at all material times acting as an agent of the 2nd defendant, by the land-owing families, namely the Idoluba chieftaincy family of Igbesa and the Ilamiro/Ilase families of Igbesa and Agbara by a Deed of Ratification and Conveyance D dated 13th day of August 1973 and Registered No. 18 at page 18 in volume 1492 at the Land Registry in the office at Ibadan.*

E 9. *Accordingly the 1st and 2nd defendants had been in occupation and possession of all the above mentioned parcels of land for 4 years before the plaintiff in trespass against the possession of the 1st and 2nd defendants, E came on the land in 1977.*

F 10. *That when the 1st and 2nd defendants got to know in 1977 of the acts of trespass committed by the plaintiff on the land of the 2nd defendant the 1st defendant sent Written notes demanding that the plaintiff should come and see the 1st defendant who warned him against the consequences of F further acts of trespass on 2nd defendant's land.*

11. *The 1st and 2nd defendants shall rely on all the recitals and facts stated in the aforementioned Deed and Ratification and Conveyance dated 13th day of August, 1973 in denial of the allegations of trespass made by the plaintiff against the 1st and 2nd defendants.*

G 12. *The 1st and 2nd defendants aver that by Ogun State Notices Nos. 109 and 110 of the 19th May, 1977 the Government of Ogun State gave notice of Acquisition (by virtue of the Public Lands Acquisition Law) of some area of land at Agbara measuring 80 square kilometers for the purpose of developing same into housing estate, Industrial and Economic Estate and H for the general development of the State.*

13. *The 1st and 2nd defendants state that by a Deed of Lease dated the 12th of June, 1978 the Ogun State Government leased to the 2nd defendant, Lawson and Company (Nig.) Ltd., an area of land of Agbara measuring 454 hectares for a period of 99 years. The area leased included the land*

mentioned in paragraph 8 above.

14. The 1st and 2nd defendants state that before the Acquisition they had acquired other farmlands in Agbara Area about 2000 acres of land for purposes of developing it into a mini-town. Some conveyances registered as No. 22 at page 22 and No. 23 at page 23 both in volume 1771 of the Lands Registry in Ibadan and also No. 18 at page 18 in volume 1492 of the Lands Registry, Ibadan will be tendered in proof of the fact that the 1st and 2nd defendants had other piece of land in Agbara area before the acquisition.

14a. The 1st and 2nd defendants state that all their land totalling over 2000 acres were included in the said acquisition.

14b. The 1st and 2nd defendants state that only a fraction of their land within the acquisition was leased to the 2nd defendants by the Ogun State Government.

15. The 1st and 2nd defendants state that in pursuance of the lease of 12/6/78 made to the 2nd defendant by the Ogun State Government the said 2nd defendant has subleased portions of the land, the subject matter of the lease, to various individuals whose names are mentioned in the lease.

16. The lease granted by the State Government covered only a portion of the second defendant's land as it was restricted to the first phase of the 2nd defendant's scheme on which infrastructural developments had been commenced before the public Acquisition.

17. The 1st and 2nd defendants in denial of paragraph 15 of the Amended Statement of claim aver that the lease of the Ogun State Government to the second defendant was negotiated, agreed and granted on the basis that the well defined and well planned project of the second defendant which had already been commenced on the land before acquisition and on which very heavy and substantial investments in infrastructural developments had been established were deemed to be in accordance with the objectives of the Government for development of industrial estate and residential estates for public purposes and these were agreed to be compatible with and in furtherance of the public purposes for which the Public Acquisition was made.

18. The 2nd defendant was granted the relevant lease on the condition *inter alia* that it must finance and execute its programme as planned and found acceptable to Government providing infractural facilities for public use at an initial costs of over 9 million Naira. Such costs have risen so far high as the development of the leased land continued.

19. The 1st and 2nd defendants state that Ogun State Government has also transferred a very large area of the land acquired to OPIC (Ogun

therefore estopped and precluded from alleging non-service of Notice of intention to acquire by the Ogun State Government. The 3rd and 4th defendants will rely on the said claims forms at the hearing of this case.

8. *The 3rd and 4th defendants aver with reference to paragraph 13 of the Amended Statement of claim that a portion of the land acquired by the said Acquisition was leased to the 2nd defendant by the then Military Governor of Ogun State by virtue of the powers conferred on him by the Crown (now State) Lands Law Cap 29 Laws of Western Nigeria. A copy of the said lease will be relied upon at the hearing of this case.*

9. *The 3rd and 4th defendants deny committing any act of trespass or deprivation of the Plaintiff of his property in the piece of land, the subject matter of this action.*

9a. *The 3rd and 4th defendants say that the High Court has no jurisdiction to entertain this action.*

10. *Whereof the 3rd and 4th defendants say that the Plaintiff's claim against them be dismissed with substantial costs against the Plaintiff on the following grounds:-*

(a) *That the plaintiff is caught by the equitable doctrines of Estoppel and Acquiescence.*

(b) *That the Plaintiff's claim discloses no cause of action that could be sustained in Law against the 3rd and 4th defendants.*

(c) *That the Plaintiff's claim is misconceived, frivolous and an abuse of the process of the court."*

The action proceeded to trial at which evidence was led by the parties. After addresses by learned counsel for the parties, the learned trial Judge, in a reserved judgment, found for the plaintiff and adjudged as hereunder:

"From the foregoing and all the authorities cited, I am compelled to hold, and I so hold:

(i) *that the 1st defendant committed acts of trespass on plaintiff's land at Agbara in Egbado South Local Government area of Ogun State in 1976 and 1977;*

(ii) *that the 2nd defendant trespassed unto the plaintiff's land in 1978 when it was let into possession under a lease agreement which Ogun State Government had no power to grant;*

(iii) *the Ogun State Government committed acts of trespass by purporting to acquire the land in dispute for public purpose which eventually proved to be for the benefit of an individual.*

It is hereby declared that the plaintiff is the right person entitled to certificate of occupancy to that piece or parcel of land lying and situate at

Agbara village, near Igbesa, Egbado South Local Government area of Ogun State and more particularly described and delineated on the Plan attached to a Deed of Conveyance (Exhibit 'A') registered as Number 51 at page 51 in Volume 1692 of the Land Registry, Ibadan (now Abeokuta).

The 1st and 2nd defendants and the Ogun State Government, their servants and/or agents are hereby restrained from committing further acts of trespass on the plaintiff's land as described in the plan attached to Exhibit 'A' in these proceedings.

The defendants are hereby ordered to pay to the plaintiff the sum of N1,500.00 as damages for their acts of trespass."

The learned Judge held that the court had jurisdiction to entertain Plaintiff's action. He also held that the acquisition of the land in dispute by the Ogun State Government was invalid, because it was not for public purpose.

The defendants were naturally unhappy with this judgment and they all appealed to the Court of Appeal which Court dismissed the appeal. Akanbi, J.C.A. (as he then was), in his lead judgment with which Sulu-Gambari and Akpabio JJ.CA agreed, concluded thus:

"Finally it is clear to me that in this case the acquisition was not made for a public purpose. It was made for the benefit of the 2nd defendant as evidenced by the lease made to it. The result is that I am unable to agree that the decision of the trial Court is wrong. I find no fault in it. Accordingly, the appeal fails and it is dismissed by me"

The 1st and 2nd Defendants (hereinafter are referred to as the Appellants) have further appealed to this Court upon six grounds of appeal. Briefs of argument were filed by the Appellants and the Plaintiff (hereinafter is referred to as the Respondent). The 3rd and 4th Defendants filed a declaration pursuant to Order 2 rule 10, Supreme Court Rules, to the effect that "they do not wish to be present or represented by counsel at the hearing of the above-mentioned appeal". They did not file any brief either. At the oral hearing of the appeal before us learned counsel for the Appellants and Respondent proffered oral arguments on the issues arising for determination in this appeal.

Two main questions arise for consideration and these are (1) Did Plaintiff prove his title to the land in dispute? and (2) Is the acquisition of the land by the Ogun state Government valid?

PLAINTIFF'S TITLE:

Perhaps this is the simpler of the issues to resolve. Plaintiff claimed a declaration of title. A long line of cases beginning with Kodilinye v. Mbanefo Odu, 2 WACA 336 has laid it down that the onus of proof in an action for declaration of title lies on the plaintiff. Except in few cases such as where the defendant claims exclusive ownership of family land (see: Atuanya v.

Onyejekwe & Anor. (1975) 3 SC. 161 at 168), the onus never shifts. And to succeed, the plaintiff must rely on the strength of his own case and not on the weakness of the defence, although the weakness of the defendant's case may at times strengthen the plaintiff's case - see: Elias v. Omo-Bare (1982) 5 SC. 25. The plaintiff must prove his title by clear, emphatic, satisfactory and cogent evidence; he cannot rely on the mistake of the defendant to succeed - see: B Onibudo v. Akibu (1982) 7 SC 60 at 84-85 where Aniagolu, JSC observed:

"In spite of this obviously unacceptable 'mistake' of the defendants, the burden of proof was upon the plaintiffs to prove their title clearly, emphatically and satisfactorily. It may not be an unattainable height requiring mathematical exactitude, but certainly a plaintiff has not yet set himself on the journey of discharging the onus by presenting to court inconsistent and contradictory story based upon inconclusive evidence of family lineage. The rigors of proof may somewhat have been ameliorated by the opinion of Privy Council in Stool of Abinabina v. Chief Kojo Enyimadu (1953) A.C. 207, yet, the fact remains, that in order to get the court to declare title in a plaintiff, the proof of ownership must be by facts which are cogently satisfactory."

And this Court in Bello v. Eweka (1981) 1 SC 101 has laid it down that a party claiming to be entitled to a declaration of title has to satisfy the court by evidene and not by admissions in the pleadings of the other party, of his entitlement to the title claimed. It is equally the law that the plaintiff's title must first be decided upon before the defendant's - see: Aromire v. Awoyem (1972) 2 SC 1 at 11.

This Court has also laid it down in Idundun v. Okumagba (1976) 9/10 SC 227 at 246-250 that ownership of land may be proved in any of five ways, that is to say, (1) by traditional evidence; (2) by production of documents of title which are duly authenticated; (3) by acts of selling, leasing, renting out all or part of the land, or farming on it or on a portion of it; (4) acts of long possession and enjoyment of the land; and (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.

Having discussed above the principles of law, I now turn to the facts of this case. Plaintiff in support of his claim to title, pleaded thus:

"7. By virtue of an instrument dated the 5th of March, 1975 and H registered as No. 51 at page 51 in Volume 1692 at the Lands Registry at Ibadan (and now at Abeokuta) the said piece of land vested in the Plaintiff as the Free-hold owner of it and he was put in possession of same.

8. The Plaintiff was put in possession by his Vendors who were the

accredited representatives of Aina Ala Adeniyi families of Agbara Village in Egbado Division of Ogun State of Nigeria."

I pause here to observe that there is no averment in the above pleadings that Aina Ala Adeniyi families owned the land they conveyed to Plaintiff nor how they came to own the land. In effect, there is nothing in Plaintiff's pleadings that he acquired title to the land in dispute from one whose ownership of the land was established. Production of documents of title alone is not sufficient to discharge the onus on a plaintiff to prove the title he claims; he must go further to trace his root of title to one whose ownership of the land has been established.

C It is clear from Plaintiff's pleadings alone that he must fail in his claim for declaration of title.

To prove his title, Plaintiff gave evidence and deposed:

"I know the land in dispute. It is in Agbara Village in Egbado South Local Government area of Ogun State. I own this parcel of land About 1972, I met one Alhaji Folorunso Idowu whose family is Aina Ala and Adeniyi family. They agreed to sell the land in dispute to me. They agreed to sell the land in dispute to me. We agreed about the price and they took me to view this said piece of land. I paid the price on 5/3/75, the land was conveyed to me. Before the conveyance I took a surveyor to survey the land which is about 15.5 acres. A plan was produce and a deed of conveyance was executed by the accredited representatives of Aina ala and Adeniyi families."

He called as PW2 one Alhaji Folorunso Idowu who testified thus:

"I live at Agbara. I am a driver. I know the Plaintiff. I also know the land in dispute. Aina Ala family was the original owner of the land in dispute. I am one of the principal members of this family. About 1975, the Plaintiff approached us to buy the land in dispute. We discussed and came to an agreement which led to selling the land in dispute to him. I was one of the Vendors of the land to the Plaintiff. We first gave a temporary receipt but after full payment, we signed some documents on oath in Court. My name is No.4 on Exhibit 'A'".

He also called one Ashimi Ajose as a witness who testified thus:

"I know the Plaintiff and the land in dispute. I am one of the Vendors of this land. The original owner of this land is Aina Ala. The H plaintiff bought this parcel of land about 11 years back. I put my thumb-impression on the document of sale."

This is all the evidence in support of Plaintiff's claim to title. Idowu's and Ajose's evidence to the effect that

"The original owner of this land in Aina Ala"

goes to no issue as no such fact was pleaded. It is not in evidence how Adeniyi family who joined in executing the conveyance to Plaintiff came into the picture. In any event, the totality of the evidence of Plaintiff and Ashimi Ajose can hardly be described as proof of Plaintiff's title to the land.

The learned trial Judge found:

"The deed of conveyance executed by Aina Ala Adeniyi family was admitted in evidence as Exhibit 'A'. The defendants do not in any way dispute that the said family was the original owner of the land or that the sale to the plaintiff was in any way irregular."

Later in his judgment the learned Judge said:

"Throughout the pleadings and the evidence in these proceedings, the title of the plaintiff was not in dispute prior to the acquisition of the said land by the Ogun State Government."

Again he observed:

"The Plaintiff called two witnesses to confirm that the land in dispute was actually sold to him by Aina Ala Family. As I indicated above, this was not in dispute."

With profound respect to the learned trial Judge, his observation run contrary to the grain of the pleadings and evidence led by the parties. It would appear that the learned Judge put the burden on the Defendants to disprove Plaintiff's title. Paragraph 3 of the further amended statement of defence of the Appellants not only denied paragraphs 7 and 8 (among others) of the Plaintiff's amended statement of claim and put the Plaintiff to a strict proof thereof, paragraphs 8 and 9 of the said statement of defence set up appellants' title to the land in dispute and averred that Plaintiff was a trespasser in respect thereof. The Appellants put in a plan, Exhibit 'M' in respect thereof. The Appellants put in a plan, Exhibit "M" which shows vividly that the land in dispute claimed by the Plaintiff is within the land conveyed to the Appellants by their own Vendors in 1973.

Again, paragraph 3 of the Further Amended Statement of defence of the 3rd and 4th Defendants denied paragraphs 7 and 8 of the Plaintiff's pleadings. In paragraph 4 of this statement of defence, reference was made to "all that parcel of land at Agbara in the then Egbado south Local Government area of ogun State including the Plaintiff's land in dispute. **Reading the said statement of defence as a whole, reference to the land in dispute as "Plaintiff's" is obviously a mistake by the 3rd and 4th Defendants. This mistake would however not relieve the Plaintiff of discharging the onus on him to prove his title, relying on the strength of his case. Even if the phrase "Plaintiff's land in dispute" is taken as an admission by 3rd and 4th Defendants, it is still of little help to the Plaintiff who had the onus to prove his title by evidence and**

not by admissions in the defendants' pleadings - Bello v. Eweka (supra).

The approach of the learned trial Judge to the issue of Plaintiff's title was palpably wrong and if he had properly considered the pleadings and the evidence in the light of the applicable legal principles he would have found that the Plaintiff failed miserably in proving his title and his claim (1) to a B declaration ought to have been dismissed.

The learned trial Judge's finding on Plaintiff's title was challenged by the appellants and the 3rd and 4th Defendants in the Court below. The following passage appears in the lead judgment of Akanbi, JCA:

"Learned Senior Counsel also said that the trial Judge misdirected C himself by holding that the defendants had not challenged the plaintiff's claim of title to the land in dispute. He said that paragraph 8 of the amended State of Defence was not only a clear challenge to the plaintiff's title but also a positive assertion of the defendants' title and how it was acquired. He added that 1st defendant produced in proof, three deeds of conveyance - D Exhibits J,K and L - executed by defendant's Vendors and also said in evidence that -

'If the plan in Exhibit a is the one in respect of which the plaintiff saw me, it does not belong to him. It belongs to me.'

Consequently, it was submitted that from both the pleadings and E the evidence it was clear that the 1st and 2nd defendants had taken the position that they bought the land claimed from the original owners who were not plaintiff's Vendors."

Regrettably, however, that Court rather resolve it by a consideration of the pleadings and evidence beclouded the issue with the question of the validity F of the acquisition by the Ogun State Government. Akanbi, JCA commented as follows:

"Having regard to the order in which learned counsel presented his oral argument, it is perhaps better to deal first with this aspect of counsel's submission. Firstly, the submission ran against the grain of the defendants' G earlier argument that had been canvassed to the effect that the land claimed by the plaintiff herein was an infinitesimal portion of a vast area of land - 80 sq. Kilometers - acquired by Ogun State Government for the purpose of developing it into 'an industrial and residential estate and that the terms of the lease subsequently executed in favour of the 2nd defendant showed clearly H that the government was very concerned that those purposes should be carried out.'

Indeed under the heading 'the material facts of the case on appeal', the 1st and 2nd appellants in their brief stated inter alia -

'The area of land leased back to the 2nd defendant was much less

than the area which the Ogun State Government acquired from it. It is out of the area leased back to the 2nd defendant that the Plaintiff claim 15.05 acres the subject matter of this action.'

But perhaps, the more significant point to emphasis at this stage is the fact that the acquisition of the land in dispute as well as the lease granted to the 2nd Defendant was made by the Ogun State Government. It was the Government who put the 2nd defendant into possession. That Government has not disputed the fact that plaintiff's land was part of the acquired land, and indeed was part of the land leased to the 2nd defendant. As between plaintiff and the Government, the identity of the land in dispute was never in issue. At the trial, counsel for the 3rd and 4th defendants, Mrs. Olopade clearly stated in her address that the land in dispute was edged RED in Exhibit L2. She was therefore in no doubt as to its identity. Her main contention was that the acquisition was validly made for a public purpose and was validly leased to the 2nd defendant as per Exhibit H in that at the time the lease was granted, the Plaintiff's land along with others had become vested in the Government and for that reason, the plaintiff's claims ought to fail. Equally in the same vein Chief Coker who appeared for the 1st and 2nd defendants at the trial, made the point that 'The land in which Exhibit A falls is within Exhibit J which belongs to the 1st defendant and it (is) 429.1 acres. Exhibit A has a total area of 15.05 acres which was alleged to be owned by the plaintiff'. It is clear therefore that the parties as conceded by their counsel know the identity of the land being claimed by the plaintiff and therefore made no serious issue of it at the trial. I do not think that the evidence of the 1st plaintiff (sic) that the land in Exhibit a does not belong to the plaintiff alters the position. The apparent concessions made by counsel in the Court below, as regards the identity of the land in dispute, takes this case out of the ambit of the case of *Elias v. Omo-Bare* (1982) 5 SC 25 on which appellant's counsel relied to say that there was no proper identity of the land in dispute or the land allegedly trespassed upon by the defendants.

It is the law that where the identity of a land is known by the parties, a plan of the land in dispute may not be necessary. See *Daniel Allison Ibuluya & Ors. v. Dikibo* (1976) 6 SC 97 at 108.

Learned counsel for the 1st and 2nd defendants again singled out for argument one of the 6 points about which the trial Judge had noted that 1st defendant did not breathe a word in his evidence and this is -

'(b) The plans attached to all the Exhibits (Deeds of Conveyance) tendered by the parties were not connected to see whether what was sold to the 1st or 2nd defendants was what the plaintiff claims.'

He said that the above observation in effect meant that the trial Judge had found that the plaintiff had not discharged the burden on him to prove that the land leased back to the 2nd defendant was the land allegedly encroached upon.

With due respect to learned counsel, he has read into the above passage what the learned trial Judge has not said. What I understand the trial Judge to be saying is that having regard to the plaintiff's evidence and the case made by him, he expected the 1st defendant in his evidence to say something on any of the six points so as to establish clearly that the plaintiff's land is not included in the lease granted to the 2nd defendant. It must be noted that the 3rd and 4th defendants admitted acquiring massive acres of land at Agbara, including plaintiff's land. The Notice of Acquisition did not say that plaintiff's land was part of the land granted to OPIC. Throughout the case, the 3rd and 4th defendants did not make any such claim. On the contrary, it would appear from the evidence and submissions of their counsel that the plaintiff's land, was included in the area leased to the 2nd defendant. The observation of the trial Judge cannot therefore in my view be said to be out of place."

With respect to their Lordships of the Court below, they fell into the same error that the learned trial Judge made. They all seemed to put the burden on the Defendants, particularly the Appellants, to disprove Plaintiff's claim to title. This approach was not in line with all decided cases on the point. The conclusion I reach is that the concurrent finding of the two Courts below on title to the land in dispute being in the Plaintiff is perverse and must be set aside. I unhesitatingly dismiss Plaintiff's claim (1) for declaration.

I may at this stage deal with Plaintiff's claim for damages for trespass. The learned trial Judge found possession in the land in dispute to be in him as against the Appellants. Plaintiff testified thus:

"I took physical possession of the land, fenced it round and planted two signboards on the land saying 'This land belongs to Chief Ayo Ajibulu'." I cleared the whole area. The 1st defendant sometimes in 1976 or 1977 destroyed the whole fence and entered the said piece of land. The 1st defendant did not have my permission to do this. This led to some row between my vendors and the 1st defendant."

Chief Lawson who testified in support of the Appellants' case, deposed that they took possession of the land acquired by them, which by Exhibit 'M' included the land in dispute, in 1973. Commenting on the evidence of chief Lawson, the learned trial Judge said:

"It is my view that this witness did not hide anything. He spoke with candour and calmness throughout."

Going by this view of the evidence of Chief Lawson, it must follow that the Appellants were in possession of the land in dispute ever before the said land was sold to the Plaintiff by the Aina Ala and Adeniyi families in 1975. When he made a fence round the land and affixed a signboard, he was trespassing on land in possession of the Appellants. He was the trespasser and not the Appellants. In any event, as both Plaintiff and the Appellants claimed to be in possession of the land, to succeed in trespass Plaintiff must show better title to the land. This he failed to do. Had the two Courts below properly directed themselves on the evidence and the law, they would not have found, as they did, that Plaintiff's claim in trespass succeeded.

I am not unaware that the learned trial Judge in his further comment on the evidence of Chief Lawson said:

"But he did not touch any of the plaintiff's following allegations, e.g.

(a) Plaintiff alleged that he bought his own parcel of land from Aina Ala Adeniyi Family. This was not challenged, neither was that parcel proved to have been sold by another family to the 1st or the 2nd defendant.

(b) The plans attached to all the Exhibits (Deeds of Conveyance) tendered by the parties were not connected to see whether what was sold to the 1st or the 2nd defendant was what the plaintiff now claims.

(c) The plaintiff alleged that he fenced round his own parcel of land after the sale to him and that the 1st defendant (by his agents) demolished this fence: this was not challenged, or denied."

The Court below, per Akanbi J.C.A. made reference to part of this comment and used it against the Appellants. Unfortunately, however, the learned trial Judge completely misconstrued the evidence before him, particularly that of Chief Lawson (who spoke with candour and hid nothing from the Court) and Exhibit M.

The conclusion I reach is that Plaintiff's claim in trespass ought to have been dismissed. And following the failure of his claims for title and damages for trespass, his claim for injunction ought also to have been dismissed. I hereby dismiss the claims.

VALIDITY OF OGUN STATE ACQUISITION:

In view of the conclusions I have reached on Question 1, it might be said that it would not be necessary any longer to consider the second question of the validity of the acquisition by the Ogun State Government of the land in dispute. Considering, however, the time given to this issue by the two Courts below, it is my respectful view that this Court ought to consider and pronounce on it.

It is not in dispute that the Ogun State Government by Notice No.

109 published in the Ogun State Gazette No. 8 Vol. 2 of 19th May 1977 acquired a large area of land (including the land in dispute) at Agbara Village. The land so acquired contained an area of approximately 80 square kilometres. The Notice was made under the Public Lands Acquisition Law and was said to be for public purposes. By the pleadings, and evidence in support, the purpose B of the acquisition was to provide an orderly development of the land for commercial, industrial and residential purposes.

The entire land of the appellants was included in the acquisition. On the evidence before the Court, the Appellant had, at the time of the acquisition, expended a sum of over N9 million in providing infra-structural development like road construction, drainage and sewerage on the land belonging to C them. This, of course, included the land in dispute. They had in fact laid out their own land into plots and, according to plaintiff's evidence, part of the land in dispute had been leased by the Appellants to a company known as food Specialities Nigeria Limited. This was the factual situation at the time Ogun D State Government acquired land in the area. The Appellants put in a claim of about N80 million compensation. The Ogun State Government, because it had not the resources to pay the huge sum as compensation and because the Appellants were developing land belonging to them prior to the acquisition in the manner envisaged by the State Government for the development of the E area and in respect of which the acquisition was made, decided to lease to the 2nd Appellant the part of the land acquired from it and in respect of which development was already in progress. It may be observed that it was not the whole land taken from the Appellants that was subsequently leased to them by the Ogun State Government but the part leased included the land in dispute. F It may also be noted that plaintiff also put in a claim for compensation in respect of the land in dispute; this was on 13/6/77, that is, barely two months after the publication of the Legal Notice acquiring the land. Government had not decided on plaintiff's claim for compensation when plaintiff instituted the action leading to this appeal. He challenged the validity of the acquisition of G the land in dispute on the ground that as the land was subsequently leased to the 2nd Appellant it could not have been said to be for public purpose.

The learned trial Judge relying on the decision of this Court in Chief D. O. Ereku v. Military Governor Mid-Western State of Nigeria & Ors. (1974) 10 SC.59 accepted plaintiff's contention and held that the acquisition of the H land in dispute was not for public purpose. He declared it invalid and set it aside. On appeal to the Court of Appeal the appellants and the other 2 defendants contended that the facts in Ereku's case were not apposite to the facts of the case on hand and that, therefore the learned trial Judge was wrong in relying on it to find that the acquisition was not for public purpose. The

plaintiff advanced the same argument proffered at the trial court that as the land was taken from him and given to the 2nd defendant Ereku's case applied and the acquisition was invalid. The Court below per Akanbi JCA (as he then was) held that Ereku's case applied and affirmed the finding of the learned trial Judge. In his lead judgment the learned justice of the Court of Appeal observed as follows:

"Counsel for the defendants have argued that this case is distinguishable from Ereku's case. The area of differences highlighted are -

(i) In this case, unlike in the Ereku's case, the 2nd defendant had on its own acquired substantial parcel of land for its own purposes, expended money on it before the Ogun State Government embarked upon its own acquisition of land in the area including the defendant's land. In the Mid-Western case, the lessee McDermott had acquired nothing on its own but relied entirely on the Mid-Western Government to acquire land for it.

(ii) In the Mid-Western case, the government acted only to help McDermott; in that the entire 50 acres which was compulsorily acquired, was leased to that Company. While in the present case only 456 hectares of land, out of 22,000 acres compulsorily acquired was leased back to the 2nd defendant.

(iii) The area of land claimed by the plaintiff as compared with the total area of land acquired by government is too small to justify the charge that it was so acquired in order that it may be given to the 2nd defendant.

(iv) That in the Mid-Western case, the acquisition was made simply to help a private company, while in this case the government acquired the land to carry out urban, economic, residential and industrial development, as the 2nd defendant had planned to do on its own.

(v) There was no evidence that the acquisition was not for a public purpose.

In my view, these are distinctions which hardly make any serious difference. For they appear to ignore the fact that the main contention of plaintiff is that he is not in any way representing the other land owners whose lands have also been compulsorily acquired. Nor is he concerned with whatever government did with their land. His case simply, is that his land which was purportedly acquired for a public purpose, was subsequently leased to the 2nd defendant - an act which he says the law views with disfavour. Thus in the case of Chief Ereku v. The Military Governor, Mid-Western State of Nigeria (1974) 10 SC.59 at 66 the supreme Court observed thus:-

'Section 2 of the public Lands Acquisition Law clearly contemplates acquisition for the public purpose of the State and not any private

enterprise that might accidentally be of benefit to the community or a section of it.

The acquisition of the plaintiff's land and the subsequent lease of the land to the 2nd Defendant cannot certainly in my view be described as a 'public purpose of the state'. The argument that the 1st and 2nd defendants B had previously acquired a larger parcel of land in the area than was leased to him, or that the development being carried out on the land by the 2nd defendant coincides with that of the government or OPIC or that money had been expended on the land by 2nd defendant, would not alter the fact that the lease was granted for the benefit of a private company - that is the 2nd C defendant.

And it is immaterial that there was some time lapse between the date of acquisition and the grant of the lease to the 2nd defendant. Nor is it of any moment that the 2nd defendant is carrying out on the land the same economic, industrial and residential activities as OPIC, the government D corporation to which a larger portion of the acquired land was granted. It would perhaps have been a different thing, if the evidence was that plaintiff's land was acquired and granted to OPIC for any of the purposes enumerated in Section 2 of the Public Lands Acquisition Law."

The same arguments proffered in the court below have again been E advanced before us in this appeal. The question that arises is: Is the case of Ereku v. Military Governor of Mid-Western State and Ors. (supra) applicable to this matter? The facts in Ereku's case run like this:-

The Government of the Mid-Western State of Nigeria purported by a notice of acquisition dated April 13, 1966, to acquire compulsorily for the F public purpose absolutely land situated in Warri in which the plaintiffs claim an interest. The Notice of Acquisition reads as follows:-

"Mid-Western Nigeria Notice No.294 Public Lands Acquisition Law (Chapter 105) LANDS REQUIRED FOR THE SERVICE OF THE GOVERNMENT OF MID-WESTERN NIGERIA

G Notice is hereby given that the following land near Igbudu Warri in the Warri Division of the Delta Province Mid-Western Nigeria is required by the Government for Public purposes absolutely:

DESCRIPTION

H All that parcel of land near Igbudu, Warri in the Warri Division, Delta Province, Mid-Western Nigeria containing an area of approximately 50.00 acres the boundaries of which are described below."

This Notice was dated April 13, 1966. The land in question was later leased by the Government of the Mid-Western State (Exhibit C) 'for the term of ninety-nine years starting from the first day of February 1966'. According to

Clause 2(C), the lease undertook as follows:-

'To pay three years' rent in advance on the execution of these presents provided that if the compensation awarded by a Court of competent jurisdiction or otherwise agreed by the parties concerned with the acquisition of the demised land by the Government of Mid-Western Nigeria shall exceed 486 per acre then the Lessee will pay so much additional rent in advance not exceeding two further years' rent in all as shall equal the difference between 486 per acre and the amount awarded by the Court or agreed as aforesaid.'

It is quite clear from this Clause that the lease was for a permanent business transaction and not a temporary arrangement between the parties. Indeed, this particular point was not disputed at the trial because 'the first to third defendants contend that they took possession of the said parcel of land at the time of acquisition for a public purpose, for which purpose the land was leased to McDermott Overseas Inc., a Panamanian company, which has now been incorporated in Nigeria under the Companies Decree No. 61 of 1968 and whose objects, i.e., fabrication of structures for oil industries, relates to mining industry and economic and industrial development of the Mid-Western State of Nigeria in particular and the Federation of Nigeria in general. The 1st to 3rd defendants will at the trial lead evidence to show that McDermott Overseas Inc. also employs a large number of Nigerians'. The defendants, in their amended statement of defence, further claimed that they were competent under the public Lands Acquisition Law or any law to lease the parcel of land as they had done, maintaining that the lease of the land to McDermott Overseas Inc. was in compliance with the State Land Law. At the trial, counsel for the defendants also maintained that the lease in question was for a public purpose within the meaning of section 2 of the public Lands Acquisition Law. Learned counsel insisted that public purpose' included 'whatever resulted in the advantage to the public'. In any case, the learned counsel was of the view that, once the acquisition notice has specified that it was for 'public purpose', the matter is closed.

This Court per Elias CJN held:

"We also find ourselves in agreement with the submission of counsel for the appellants that an acquisition by the Government of the Mid-Western State for the private need of a private corporation or person is unlawful since by no stretch of the imagination can one say that the enterprises of the McDermott Overseas Inc., beneficial though it might be, can be regarded as being for public purpose of the State. Section 2 of the Public Lands Acquisition Law clearly contemplates acquisition for the public purpose of the State and not any private enterprise that might incidentally be of

benefit to the community or a section of it."

Exhibit 'H' is the Deed of Lease whereby the Government of Ogun State leased to the 2nd Appellant part of the land it acquired by Notice No. 109 of 1977. A clear reading of the Deed reveals that the 2nd Appellant had fully developed the land leased to kit by provision of roads, sewerage and water B and had also laid out the land into plots and made grants to numerous persons and companies. According to the evidence of Chief Lawson, all these have been done before the acquisition by the Ogun State Government.

Considering the facts in this case, I would not agree with their Lordships of the two Courts below that Ereku's case applies. Public purpose is C defined in section 2 of the public Lands Acquisition Law Cap 105 Laws of Western State of Nigeria 1958 applicable in Ogun State at all times relevant to these proceedings, as meaning:

"..... a public purpose as hereinafter defined insofar as such purpose relates to any matter with respect to which the Government of D the Region has power to make laws, and includes -

(a) for exclusive Government use or for general public use;

(b) for or in connexion with sanitary improvements of any kind, including reclamation;

(c) for or in connexion with the laying out of any new township or E Government station or the extension or improvement of any existing township or Government station;

(d) for obtaining control over land contiguous to any port;

(e) for obtaining control over land the value of which will be enhanced by the construction of any railway, road or other public work or F convenience about to be undertaken or provided by the Government;

(f) for obtaining control over land required for or in connexion with mining purposes; and

(g) for obtaining control over land required for or in connexion with planned rural development or settlement;

G (h) for or in connexion with housing estate, economic, industrial, or agricultural development and for obtaining control over land required for or in connection with such purposes;"

(underlining are mine for emphasis)

Having regard to the purpose for which the land was being applied by the 2nd H Appellant before and after the acquisition it would appear to me that had the Courts below properly directed themselves on the definition of "public purpose" in the Law, they would not have concluded, as they did, that EREKU'S case applied. Paragraphs (f) - (h) of the above definition allow Government to acquire land required for the purposes stated therein. The carrying out of

such purposes need not be by the Government itself. It is under similar provisions in Federal Statutes such as the Public Lands Acquisition Act (now replaced by the Land Use Act) that the Federal Government acquires land compulsorily and leases same to oil companies in furtherance of their oil prospecting activities. It has not been suggested that such acquisitions were not for public purpose. The prevalent practice of Governments acquiring land compulsorily and leasing same to developers for housing estate, economic, industrial or agricultural development must be seen in the same light, that is, the involvement of the private sector in the orderly development of both the urban and rural areas. EREKU's case is an example of naked exercise of power which this Court deprecated in that case. Such was not the case here. The land in dispute is an infinitesimal portion of the entire land acquired and of the land subsequently leased to the 2nd Appellant by the Ogun State Government. And perhaps more importantly is the failure of the plaintiff to establish his title to the land in dispute. These factors, in my respectful view, distinguish this case from EREKU's case (supra).

Having held earlier in this judgment that the plaintiff failed to prove his title to the land in dispute it follows that he lacked the locus standi to challenge the validity of the acquisition, by the Ogun State Government, of the land in dispute.

For the reasons I have given above I have come to the conclusion that this appeal must be allowed and it is hereby allowed. The judgment of the Court of Appeal affirming that of the trial High Court is hereby set aside. In its stead I order that Plaintiff's claims be dismissed in toto. I award to the Appellants N1,000.00 costs of the trial in the High Court, N350.00 costs of the appeal in the Court of appeal and N1,000.00 costs of the appeal in this Court.

BELGORE JSC

It is too late in our law to disregard *onus probandi*. The person that asserts must prove and the fact that the defendant never proves or even remains silent will not discharge the burden on the plaintiff. The proof required is the evidence based on facts pleaded in the statement of claim: that evidence must be clear, cogent and directly pointing at the issue in dispute so that the plaintiff's case is preponderantly believed and preferred. In an action for declaration of title to land, several authorities have laid down the burden of proof the plaintiffs must discharge [Kodilinye v. Odu 11 WACA 336; Atuany v. Onyejekwe & Anor. (1975) 3 SC. 161, 168; Ohiaeri v. Akabeze (1992) 2 NWLR (pt. 221) 1]. Thus the primary responsibility of the plaintiff is to prove his case and not rely on the weakness of his adversary's case. Where both parties rely on historical evidence, there must be cogent evidence of how the land de-

volved from generation to generation; and relying merely on one family as vendor may not be enough unless that family proffered evidence of how they came about the land [Ekretsu v. Oyobebere (1992) 9 NWLR (pt. 266) 438; Ohiaeri Akabeze (1992) 2 NWLR (pt. 221) 1]. The respondent in this case only pleaded that he was put in possession of the land in dispute by Aina Ala family who were his vendors. There is no pleading of how Aina Ala family came by the land and of course no evidence was led to clear this cloud; there certainly could have been no admissible evidence of what has not been pleaded [Olabanji v. Omokewu (1992) 6 NWLR (pt. 250) 671]. The burden on the plaintiff, now respondent, was to prove his title and this he has failed to do by evidence, and has equally not done enough by pleading to throw more light on how Aina Ala family came by the land. [Bello v. Eweka (1981) 1 SC. 101; Aromire v. Awoyemi (1972) 2 SC. 1, 11]. The very foundation for asserting his title to the land in dispute has not been laid by the respondent. He has offered no historical evidence, neither did he plead it; there is no evidence of his exercising any tangible dominion over the land apart from erecting a sign board virtually out of view of everybody; there is no evidence of his exercising any dominion over the adjacent or surrounding land; and the production of title deeds in proof of his title is no more than reliance on possibility of Aina Ala's family having a valid title to transfer. It is therefore strange that title was imputed in the respondent by the lower Courts; before advertng to issue of compulsory acquisition, the first step would have been to inquire into the title of the plaintiff/respondent. [Okumagba v. Idundun (1976) 9-10 SC. 227, 246-250. Merely pleading that he acquired his title to be on the land through Aina Ala family, without more, is not enough to establish title in respondent. He ought to have gone further by pleading how this family, that was not made a party to this action, came by the land in dispute.

The land in this case forms a minuscule part of a large track of land acquired by Ogun State Government for public purpose. The trial Court as well as the Court of Appeal relied heavily on the case of Ereku v. Military Governor of Midwestern State & Ors. (1974) 10 SC. 59 in arriving at the conclusion that the acquisition whereby land is taken by government from one citizen and given to another citizen is not done for public purpose. NON POTEST REX GRATIAM FACERE CUM INJURIA ET DAMNO ALIORUM. What we have now is a far cry from the situation in Ereku's case; the law has changed and "public purpose" as defined in 1960 Laws of Western Region of Nigeria on public Lands Acquisition Law, applicable to the defunct Midwestern State when the case was decided has been amplified in ramifications. In Ereku's case the exercise of acquisition was arbitrary and contrary to the law as it was; it was thus in that judgment deprecated. The acquisition in the instant case

on appeal is clearly within the purview of the definition of "public purpose" in section 2 public Lands Acquisition Law (Cap 105, Laws of Western Nigeria 1958) and now laws of Ogun State Cap 105, S.23 and thus it was not ultra vires, null and void.

I therefore find great merit in this appeal and I shall allow it. For the fuller reasons in the judgment of Ogundare JSC, which I fully adopt as mine I also allow this appeal with N1,000.00 as costs to the appellants against the respondent. I also adopt further consequential orders as to costs in Ogundare, JSC's judgment as mine.

MOHAMMED JSC

I have had a preview of the judgment of my learned brother, Ogundare, JSC., in draft and I entirely agree with him that this appeal has merit and ought to be allowed. I agree that prior to the acquisition of the land belonging to the appellants which included the land in dispute by Ogun State Government the appellants had been in control and possession of the land since 1973. The learned trial judge agreed with the 1st appellant when he gave evidence explaining how he came into possession of his entire land before the compulsory acquisition.

In the lead judgment, my learned brother Ogundare, J.S.C., had considered all the issues canvassed in this appeal and I have nothing more to add. This appeal therefore succeeds and it is allowed. The judgment of the two lower courts are hereby set aside. The claim of the plaintiff/respondent before the trial High Court is accordingly dismissed. I abide by all the consequential orders made in the lead judgment including the assessment and award of costs.

ONU JSC

I had the advantage of a preview of the judgment just delivered by my learned brother Ogundare, JSC. I am in entire agreement with him that the appeal is meritorious and ought to succeed.

I wish to expatiate briefly on the two main questions that arise for our consideration which are:

- (1) Did the plaintiff prove his title to the land in dispute? and
- (2) Is the acquisition of the land by the Ogun State Government valid?

Each of these issues I answer in the negative and affirmative respectively. I will comment on them together briefly as follows:-

I need firstly to advert to the plaintiff's averments in paragraphs 7

and 8 of his Amended Statement of Claim as follows:-²

In his testimony in the trial court, the plaintiff, after showing how his original deed of conveyance in respect of the land in dispute was stolen at the Supreme Court premises in Lagos in 1976, tendered a certified true copy thereof which was received as Exhibit 'A'. Continuing his evidence in-chief, he said as

B follows:-

"I took physical possession of the land, fenced it round and planted two sign-boards on the land saying. "This land belongs to Chief 'Ayo Ajubulu." I cleared the whole area. The 1st defendant sometimes in 1976 or 1977 destroyed the whole fence and entered the said piece of land. The 1st C defendant did not have my permission to do this. This led to some row between my vendors and the 1st defendant.

After this, I wrote a letter of warning to the 1st defendant, Chief A. O. Lawson, which I delivered personally. He sent for me after reading this letter and I went to see him. He wrote a letter to me I now produce this D letter..... marked Exhibit 'B'."

The 1st and 2nd Defendants in their Further Amended Statement of Defence pleaded in paragraphs 4, 5 and 9 thereof as follows:-³

Testifying on behalf of himself and the 2nd defendant in strict adherence to their pleading above, the 1st defendant giving evidence as D.W.3, said inter E alia under examination in chief thus:

"On 12/6/78, there was a land transaction between Lawson & Co. Ltd. and Ogun State Government. The Government leased to the Company a parcel of land at Agbara Estate. Exhibit 'H' is identified as the deed of lease in respect of the lease.

F *Before I know (sic) Chief Ajibulu - the plaintiff in this case. We met some years ago, once or twice. This would be about 1970s. I identify Exhibits 'B' and 'C'. I wrote them to Chief Ajibulu in 1977. At this time, my company was acquiring several parcels of farmland around Agbara village, with a view to developing them. We commenced this process of acquisition G in 1973. By the time I sent these two notes, we had acquired over 2 thousand acres stretching from Agbara towards Igbaesa."*

When it is remembered that the plaintiff's claim against the defendants - particularly 1st and 2nd defendants was for declaration of title or alternatively that he was entitled to a certificate of occupancy to the piece or parcel of land H measuring some 15.05 acres, N2,000.00 damages for trespass and an injunction, he lacked the competence to maintain his action for the following rea-

² See p. 1140 B

³ See p. 1141 H

sons:-

1. The 1st and 2nd defendants had commenced the process of acquisition of the parcels of land part of which the plaintiff's portion formed a very minute part, in 1973 whereas plaintiff came unto the piece of land now in dispute in 1976 or 1977. The defendants were thus first in time thereon. As there cannot in law be concurrent possession by the two parties claiming B adversely to each other, legal possession by one party, whether dejure or de facto, physical or constructive, excludes the plaintiff and renders him liable in damages for trespass. See Amakor v. Obiefuna (1974) 3 S.C.67; Balogun v. Labiran (1988) 3 NWLR (part 80) 66 at page 82 and Raphael Udeze & anor. v. Paul Chidebe (1990) 1 NWLR (part 125) 141 at page 162. C

2. The plaintiff failed to establish the identity of the land in dispute through pleading and evidence.

3. It is significant to note also that the plaintiff failed to effectively trace his root of title to Aina Ala Adeniyi family. The sort of pleading he proffered, in my respectful view, is superficial in that he has failed to prove the base upon which he founded his title; in which case his claim will fail. See Abdul Hamid Ojo v. Primate Adejobi & Ors. (1978) 3 S.C.651; Preston Holder v. Thomas 12 W.A.C.A. 78; Odofin v. Ayoola (1984) 11 S.C.72; Mogaji v. Cadbury (Nigeria) Ltd. (1985) 2 NWLR (part 7) 393; the latter in which this court held inter alia that - E

"Once a party pleads and traces the root of his title to a particular person or family, he must establish how that person also came to have title vested in him. He cannot ignore the proof of his overlord's title and rely on long possession."

See also Ajani v. Ladepo (1986) 3 NWLR (part 28) 276 following Kpo v. Ita 11 F NLR. 68. The plaintiff had failed woefully to state how the land in dispute devolved on the Aina Ala Adeniyi family. On this shortcoming alone the plaintiff's action deserves to fail.

4. The defendants having shown that they had been on the land measuring 2,000 acres since 1973 and the learned trial Judge having held in G respect of the 1st defendant among other things that -

"He admitted under cross-examination that the 2nd defendant is a commercial venture in which the Ogun State had no shares. He did not know, whether the land in dispute formed part of what the Ogun State Government acquired." H

It is my view that this witness did not hide anything. He spoke with candour and calmness throughout. The fact that the plaintiff had admitted he first came on the land in dispute earliest in 1975 made it crystal clear that the defendants were first in time on the land. Who is first in time is first in law. See

- A. O. Sodimu v. S.O. Akande & anor. (1972) W.A.C.A. vol. 1, 204 at 208. The findings of fact or inference drawn therefrom by the learned trial Judge at page 131, under (a), (b), (c) and (d) of the Record and which the court below affirmed is palpably perverse. Such a perverse decision ought to be set aside. See Awoyale v. Ogunbiyi (1986) 2 NWLR (part 24) 626; Sunday Baridam v. The State (1994) 1 NWLR (Part 320) 250; Osayeme v. The State (1966) 1 NWLR, 388 and Adimora v. Ajufu (1988) 3 NWLR (part 80) 1. Rather than the defendants being trespassers on the land in dispute out of which the Ogun State Government in which all land in the State is vested, acquired some 80 square metres thereof, it is the plaintiff who is shown as a trespasser on the defendants' land.
- C For this reason, he could not be entitled to an injunction over land on which he is shown palpably to be a trespasser. The principle is that trespass being an action against possession, postulates that the plaintiff who claims damages and injunction for trespass, must inter alia aver and prove that he is in physical or constructive possession and that the defendant infringed that possessory right. See Awooner-Renner v. Annan 2 W.A.C.A.258; Oluwi v. Eniola (1967) NMLR. 339 and Christopher Okolo v. Eunice Uzoka (1978) 4 S.C.77 at 87. Had the two courts below considered the cases put forward by the parties carefully as they ought to they would have arrived at a different conclusion than they did.
- E 5. If as indeed happened in this case, the plaintiff's root of title is faulty or hangs in the air, so to say, then he lacked the locus standi to challenge the validity of the acquisition of the parcel of land in dispute by the Ogun State Government which, as has been amply demonstrated herein, was acquired for public purpose. In this regard, see the case of Ereku v. The Governor of Mid-
- F Western State (1974) 5 S.C.59 whose facts, in my opinion, are distinguishable from the case in hand and so neither on all fours therewith nor of any avail to the plaintiff. See, however, the recent but yet-to-be reported case of this court No. SC 142/1992: Irabor Oviawe v. Integrated Rubber Products Nigeria Limited & anor. delivered on 7th March, 1997 { See (1997) 3 KLR (pt. 49) 469 }
- G which is on all fours with the instant case.

For these and the more elaborate reasons set out in the judgment of my learned brother Ogundare, J.S.C. I too allow the appeal and make the same consequential orders inclusive of those regarding costs awarded therein.

H **ADIO JSC**

I have had the advantage of reading, in advance, the judgment just delivered by my learned brother, Ogundare, J.S.C., and I entirely agree with him that this appeal should be allowed. I too allow it and abide by the consequential orders, including the orders for costs. In my view, the two main

issues which are for determination are as follows:-

(i) Whether the 1st respondent proved that he was entitled to the declaration and other reliefs sought by him.

(ii) Whether the acquisition of the land in dispute by the Ogun State Government was legally valid.

The first relief claimed by the 1st respondent was for a declaration of an entitlement to a declaration to statutory certificate of occupancy to the land in dispute. His claim was based on the instrument executed by representatives of the families that allegedly owned the land in dispute in favour of the 1st respondent purporting to vest the land in dispute in the 1st respondent. The obvious defect in the case of the 1st respondent, in this connection, was that there was no averment in his pleading or anything in the evidence led by him showing the root of title of the persons who purported to convey the land in dispute to the 1st respondent. What the 1st respondent sought for was a statutory right of occupancy. In the circumstance, the onus was on him to satisfy the court that he was entitled, on the evidence led by him, to the declaration which he has sought. See Kodilinye v. Odu, 2 W.A.C.A. 336. Where the plaintiff alleged title is based on a grant, the burden is on the grantee, if the alleged grant is not admitted, to plead and to prove the origin of the title of the grantor. See Ogunleye v. Oni, [1990] 2 N.W.L.R. (pt. 135) 745; and Ajibono v. Kolawole, [1996] 10 N.W.L.R. (pt. 476) 22. If, as it was in this case, the burden on a plaintiff in a claim for a statutory right of occupancy, is not discharged, the weakness in the defendant's case will not help the plaintiff, and the proper judgment should be for the defendant. However, such a judgment decrees no title to the defendant, he not having sought the declaration. See Kodilinye's case, *supra*; and Abisi v. Ekweakor, [1995] 6 N.W.L.R. (pt. 302) 643. The failure of the 1st respondent to discharge the onus on him in relation to the claim for declaration of a statutory right of occupancy was not only fundamental; it was also crucial. The declaration could not be granted to the 1st respondent.

The forgoing is not the end of the matter. The 1st respondent also claimed damages for trespass. The law is that only a person who was in possession of the land in dispute at the time of the alleged trespass that can sue for damages. See Amakor v. Obiefuna, [1994] 3 SC. 67; and Olagbemi v. Ajagunbade 111, [1990] 3 N.W.L.R. (pt. 136) 37. It is also the law that two persons adversely claiming against each other cannot be in possession of the same land at the same time. See Amakor's case, *supra*. If there is a dispute on the question of who, out of two or more persons, is in possession of a parcel of land, the person who is shown to be the owner thereof is deemed to be in possession. See Balogun v. Labiran, [1988] 3 N.W.L.R. (pt. 80) 66. In this

case, the evidence of Chief Lawson (who was the 1st appellant) which, in the circumstances of this case, should have been accepted by the learned trial Judge and acted upon by the courts below, was that he took possession of the land in dispute in 1973 whereas the evidence led by the 1st respondent was that he took possession of the land in dispute in 1975. As I have stated above, B two persons adversely claiming against each other cannot be in possession of the same land at the same time. There was no evidence that prior to the acquisition of the aforesaid land by the Ogun State Government Chief Lawson at any time gave up possession thereof. In the circumstance and since as, I have shown above, the 1st respondent woefully failed to prove that the land C in dispute belonged to him or that he was entitled to a statutory right of occupancy in relation to it, the 1st respondent could not legally or properly be awarded damages for trespass as he was not in possession of the land in dispute at the time that the alleged trespass was committed.

With reference to the claim for injunction, it has to be pointed out D that the fact that the 1st respondent failed to prove that he was entitled to statutory right of occupancy in relation to the land in dispute or that he was in possession of it had knocked the bottom off the claim for an injunction. An injunction is not granted in vain. There was no interest of the 1st respondent in the land in dispute requiring any protection by means of an injunction.

E I now come to the second issue which was whether the acquisition of the land in dispute by the Ogun State Government was legally valid. The validity of the acquisition of the land was challenged on the ground that it was not for a public purpose, as defined in the applicable legislation. The learned trial Judge upheld the contention and the court below affirmed the decision of F the learned trial Judge on the point having regard to the decision of this court in the case of Ereku v. The Military Government, Mid-Western State of Nigeria, [1974] 10 S.C.59. The circumstances in Ereku's case were not, as rightly contended for the appellant, the same as the circumstances in the present case. Apart from other things, the 1st respondent did not show that he had G any interest in the land in dispute. He was not entitled to a declaration of statutory right of occupancy in relation to it and he was not in possession thereof at the time of the trespass. In short, he had no locus standi to raise the point.

It was for the foregoing reasons and the detailed reasons given in H the lead judgment of my learned brother Ogundare, J.S.C., that I agree that the appeal should be allowed. I allow the appeal and abide by the consequential orders, including the orders for costs.