

SUPREME COURT OF NIGERIA

30TH APRIL, 1999. SC. 45/1993.

**CORAM:- S. M. A. BELGORE, M. E. OGUNDARE, S. U. ONU,
O. ACHIKE, U. A. KALGO, JJSC.**

ABIODUN ADELAJA & 2 ORS. PLAINTIFFS/APPELLANTS

AND

YESUFU ALADE & ANOR. DEFENDANTS/RESPONDENTS

APPEALS - Issues - Newly raised by the court - And which do not arise from the parties' pleadings - Any decision based on such issues - Will not be allowed to stand.

APPEALS - Order - Dismissal - Relief for damages in trespass - Which was abandoned on appeal - The proper order to make is that of dismissal - Since it was dismissed by the lower court.

COURTS - Adjudication - Academic exercise - A court of law is enjoined to adjudicate between parties in relation to their competing legal interests - And never to engage in a mere academic discourse.

COURTS - New issues - Raised by the court - And which do not arise from the parties' pleadings - Any decision based on such issues - Will not be allowed to stand.

DOCUMENTS - Instrument - Due execution - Takes place when all acts necessary to render the instrument complete - And give it validity - Have been performed.

INTERPRETATION OF STATUTES - Land Instrument Registration Law - Sections 18(1) -(5) and 31(2) -The effect of a combined reading of the sections - Is that once an instrument has been registered in accordance with section 18(1) -(4) - A certified copy of it shall be received in evi-

dence without further proof.

INTERPRETATION OF STATUTES - *Land Titles Registration Law - The Provisions of section 5 - Reliance on it - After due compliance with sections 18(1) - (5) and 31(2) of the Land Instruments Registration Law - In order to establish due execution of a registered conveyance - Is uncalled for.*

INTERPRETATION OF STATUTES - *Land Instrument Registration Law - The effect of section 32(2).*

JUDGMENTS - *Injunction - Unspecified land - An injunction cannot be granted in respect of unspecified land.*

JUDGMENTS - *Issues - Newly raised by the court - And which do not arise from the parties' pleadings - Any decision based on such issues - Will not be allowed to stand.*

JUDGMENTS - *Order - Dismissal - Relief for damages in trespass - Which was abandoned on appeal - The proper order to make is that of dismissal - Since it was dismissed by the lower court.*

LAND LAW - *Claim for title - Identity of the Land in dispute - Where the plan filed by the appellants - Is not challenged by the respondents - It is deemed to be admitted.*

LAND LAW - *Conveyance - Forgery - Denial by one of the executants of being a party to the execution - The burden of proving forgery rests on that party who alleges.*

LAND LAW - *Declaration of title - Identity of the land in dispute - Where it was mistakenly referred to as the area Verge Black in the survey plan - And contrary to the evidence proffered - The relief will not be granted.*

LAND LAW - *Injunction - Unspecified land - An injunction cannot be granted in respect of unspecified land.*

LAND LAW - *Instrument - Due execution - Takes place when all acts necessary to render the instrument complete - And give it validity - Have been performed.*

LAND LAW - *Land Instrument Registration Law - The effect of section 32(2).*

LAND LAW - *Land Instrument Registration Law - Sections 18(1) -(5) and 31(2) -The effect of a combined reading of the sections - Is that once an instrument has been registered in accordance with section 18(1) -(4) - A certified copy of it shall be received in evidence without further proof.*

LAND LAW - *Land Titles Registration Law - The Provisions of section 5 - Reliance on it - After due compliance with sections 18(1) - (5) and 31(2) of the Land Instruments Registration Law - In order to establish due execution of a registered conveyance - Is uncalled for.*

LAND LAW - *Title - Documents of title - Due execution - The appellants having established due execution of the conveyances in the present case - They have prima facie established their title.*

FACTS

At the High Court, Ibadan, the plaintiffs/appellants claimed against the defendants/respondents jointly and severally, a declaration of title to statutory right of occupancy of parcel of land at Tabon-tabon village Ibadan, damages for trespass and injunction restraining the respondents from further acts of trespass. The plaintiffs case was that sometime in 1957, the Alade Family established a layout of plots for sale of their family land at Tabon tabon village near Ring Road, Ibadan. The family head and representatives were Adebayo Alade, Adetohun Alade (deceased) and Yesufu Alade (first defendant). The first plaintiff, Abiodun Adelaja bought

six plots in the layout, i.e. plots Nos 20, 21, 24, 25, 32 and 37 and was evidenced by a sale agreement dated 23/3/58 and a conveyance registered as No 53/53/259 of 16/6/58 (Exhibit D). The 2nd plaintiff, Abiodun Oyetubo bought No. 33 as witnessed by a deed of conveyance registered B as No. 48/48/353 and dated 4/12/59 (Exhibit E) while the 3rd plaintiff Kola Ayodele bought four plots i.e. plots No. 16, 17, 28 and 29 as also witnessed by a deed of conveyance registered as 16/16/254 of 16/5/58 (Exhibit F). The eleven plots bought by the plaintiffs are as shown in C survey plan FA/M/32A (Exhibit K) dated 21/1/78. The plaintiffs have been put in possession and exercised acts of ownership on the land until 30/5/77 when 1st plaintiff saw 2nd defendant and two workmen constructing a building foundation on the land. The said building construction not only obstructed the proposed road within the Alade family layout D but protruded at various places into plot No. 32, plot No. 33 and plot Nos 28 and 29 properties of the 1st, 2nd, and 3rd plaintiffs respectively. Hence the plaintiffs instituted the action. In their defence, the first defendant denied being a party to the execution of the documents of title pleaded by E the plaintiffs, and except that he admits selling two plots of land to the 1st plaintiff but also denies that he trespassed on both plots. While the second defendant denied liability as he was a workman of the first defendant.

F At the end of the trial, the claim of the 1st and 2nd plaintiffs for declaration only succeeded but the claims of all the plaintiffs for damages and injunction failed and were dismissed by the learned trial judge. The plaintiffs appealed to the Court of Appeal, Ibadan Division, and the respondents also cross-appealed. The Court of Appeal non-suited the ap- G pellants on their claim for declaration and their appeal on trespass and injunction dismissed. The appellants have further appealed to the Supreme Court raising three issues. The appellants applied successfully to the Supreme Court for leave to amend paragraph 19 (1) of their amended H statement of claim to read as follows:-

"Declaration of title to a statutory Right of Occupancy.... In respect of all that piece or parcel of land verged black as per the plan No. FA/M/32A"

ISSUES FOR DETERMINATION

"(a) Did Exhibits D, E and F i.e. The Deeds of conveyance in favour of the Appellants pass title in the land in dispute as reflected in Exhibit K to the Appellants.

(b) Did the Appellants by the preponderance of evidence prove their case to entitle them to their claims for title, injunction and damages in respect of the disputed plots of land as reflected in their plan No. FA/M/32A drawn by licensed Surveyor A.O. Adebogun, dated 16/11/79.

(c) Whether the Court of Appeal was right to have non-suited the Appellants."

HELD (Unanimously dismissing the appeal per lead judgment of **ACHIKE, JSC**)

Interpretation of Statutes - Land Instrument Registration Law

1. The resultant effect of the combined reading of sections 18(1)-(5) and 31(2) of the Land Instruments Registration Law is that once an instrument has been registered in accordance with sections 18(1)-(4), a certified copy of a conveyance so registered, and in compliance with section 31(2) "shall be received in evidence without any further or other proof in all civil cases." This construction accords with the decisions of this court in A.T. Jules v Raimi Ajani (1980) 5-7 SC 96 and Adelaja v Fanoiki (1990) 3 SCNJ 131. In both cases the Supreme Court reaffirmed the principle that a registered conveyance under the land Instruments Law is sufficient evidence of its due execution. (p. 927 C)

Interpretation of statutes - Land Titles Registration Law

2. The lower court however stated that unless a conveyance registered under section 5 of the Law Titles Registration Laws of Oyo State is admitted in pleadings or at the trial, its due execution must be proved unless the party concerned can pray in aid the presumption under section 130 of the Evidence Act as to recitals etc. Reliance on section 5 of the Law Title Registration Law, in my view, after due compliance with sections 18(1)-(5) and 31(2) of the Land Instruments Registration Law in order to establish due execution of a registered conveyance is uncalled

for. And as was pointed out in Adelaja v Fanoiki (supra) the question whether the deed of conveyance admitted in evidence is proof of its execution does not arise under the presumption of due execution set out under section 122 or 129 of the Evidence Act. On the contrary, the question of due execution of registered conveyances admitted in evidence in this case as Exhibits D, E and F manifestly falls within the ambit of the provisions of section 32(2) of the Land Instruments Registration Law, Cap 56 Laws of Oyo State, 1978 Vol.III and they require no further proof - whether or not admitted in pleadings or at the trial - as regards their due execution. See Cardoso v Daniel (1966) 1 All NLR 25. (p. 927 E)

Land Instrument Registration Law - The effect of S. 32(2)

3. The effect of section 32(2) is indeed far-reaching. Thus when a conveyance has been duly executed under section 18(1)-(4) of the Land Instruments Registration Law, the mere denial by one of the executants of being a party to the execution cannot avail him nor effect the validity of the registered conveyance because section 31(2) enjoins that even a certified copy of the conveyance registered in accordance with section 18(3) and (4) will be admitted in evidence without any further or other proof in all civil cases. (p. 928 B)

Land Law - Conveyance

4. It seems useful to take up the question of 1st respondent's denial of being a party to any of the documents relied on by the appellants in proof of the registered conveyances. In my opinion, the implication of 1st respondent's denial that it is his thumb-print that appears in Exhibit D, E, F, H and R is tantamount to saying that these documents are a forgery or a fake. Of course, in such a situation the burden of proof of the forgery rests on the party who alleges. See section 137(2) Evidence Act. Since a crime is alleged, the standard of proof is demanding because the onus is on him who alleges to prove it beyond reasonable doubt. See Ikoku v Oli (1962) 1 All NLR (vol. 1) 194 at 199. 1st respondent has not led evidence to establish that he did not thumb-print Exhibits D, E, F, H and

R, save his mere denial; accordingly, he has failed to prove that Exhibits D, E, F, H and R are a forgery. (p. 928 D)

Land Law - Instrument

5. An Instrument is said to be duly executed when all acts necessary to render it complete and give it validity have been performed. Thus Exhibits D, E and F are valid conveyances respectively between 1st appellant and the 1st respondent's family, 2nd appellant and the 1st respondent's family and 3rd appellant and the 1st respondent's family. Exhibits D, E and F being certified true copies of deeds of conveyance that have been duly executed were properly received in evidence and required no further proof or other proof. (p. 929 C)

Land Law - Title - Documents of title

6. The appellants having established due execution of Exhibits D, E and F, then, prima facie they have established their title, tracing it to the Alade Family. Learned appellants' counsel, Mr. A.O. Oduleye calls in aid the Supreme Court decision in Idundun v Okumagba (1976) 1 NMLR 200 E wherein that court enumerated the five ways in which ownership of land may be proved, and one of them is by deed of conveyance. Referring to the second way in this regard, this court stated as follows:

"Secondly, ownership of land may be proved by production of documents of title which must, of course, be duly authenticated in the sense that their due execution must be proved."

Appellant have produced documents of title, Exhibits D, E and F which are duly authenticated and registered, and by virtue of section 31(2) of the Land Instruments Registration Law of Oyo State they require no further proof of execution. (p. 929 E)

Claim for title - Identity of the land in dispute

7. I consider it proper to state that where there is no dispute as to the identity or particular location of the parcel of land in dispute failure to file a plan would not necessarily be detrimental to a claim for title, damages for trespass or injunction in so far as from the description of the land in

controversy it is apt for a court to determine, with certainty, the particular area where an order will be made. In this case, a plan, Exhibit K was filed with the amended Statement of claim which was never challenged by the respondents either in their pleading or in evidence as not reflecting the area in dispute, nor did they file any plan with their Statement of Defence reflecting a different area as the land in dispute. It is now trite that when a fact is not denied, it is deemed admitted. See Ogunleye v Oni (1990) 2 NWLR (Pt.135) 745. For the same reason, where the appellants pleaded and served the respondents a survey plan, which subsequently was admitted in evidence as Exhibit K, which showed the boundaries and the features of the land in dispute, these will constitute sufficient proof of the boundaries and features set out in the land in dispute. Therefore, where the respondents intend to challenge or dispute such boundaries or features they must do so by specifically traversing the appellants' pleading in this regard because a simple or mere general traverse will be insufficient. See Elias v Omo-Bare (1985) 5 SC 25 at pp 38-39, Omorie v Idugienwaye (1985) 2 NWLR 41 at p. 60 and Adimora v Ajufo (1988) 19 NSCC (pt.1) 1005. Since there was no specific traverse or challenge of the boundaries of the land in dispute as set out in Exhibit K, then the admission of Exhibit K in evidence tantamounts to sufficient proof of the boundaries and features therein. In the result, the respondents must be taken to have admitted the correctness and accuracy of the dimensions and boundaries of the land in dispute as reflected in the appellants plan filed with their amended statement of claim and admitted in evidence as Exhibit K. (p. 930 G)

G *Courts - New issues*

8. It is however clear that the issue of super-imposition of the Alade Layout plan on the appellants' composite plan was introduced by the two lower courts and not by the respondents. This Court has repeatedly pointed out that it is not open to the court to introduce new issues which do not arise from the parties' pleadings. Any decision based on issues not raised by the parties will not be allowed to stand; see Yakassai v Incar Motors Ltd 5 SC. 107, Idika v Erisi (1988) 5 SCNJ 208 and Adeniji v

Adeniji (1972) 4 SC 10. (p. 931 H)

Land law - Declaration of title

9. The net result of what I am saying is that appellants' claim for declaration of title to certain plots of land in the Alade Family Layout Plan, particularized as plot Nos. 28, 29, 32 and 33 as led in evidence, and fully supported by Exhibits D, E and F does not tally with paragraph 19(1) of their further amended Statement of Claim wherein the area on which declaration is sought to be pronounced is said to be the area 'verged BLACK on appellants' litigation plan No. FA/M/32A, drawn by licensed surveyor A.O. Adebogun dated 16/11/79.' As we have earlier noted, the area verged BLACK is simply the area trespassed upon by the respondents and in fact it includes a portion of Alade Layout Plan allegedly said to be an area for a proposed road within the area that the appellants are seeking a declaration of title to be made in their favour, and could not be because the area of the proposed road is clearly outside the area covered by appellants' plots Nos, 28, 29, 32 and 33. It is now well-settled, I think, that in an action for declaration of title to land, the identity of the said land must be ascertained with certainty. While a plan is not a sine qua non in all cases for declaration of title to land, nevertheless the land must be described with such degree of accuracy that the said parcel of land to which the declaration of title is sought to be tied cannot be in any doubt. Needless to say that the onus is on the plaintiff to establish the identity of the land in dispute. See Baruwa v Ogunsola 4 WACA 159 and Kwadzo v Adjei 10 WACA 274. I am clearly of opinion that the appellants failed to discharged this onus placed on them of properly identifying the land in dispute in the face of the muddle or mix-up of their counsel in the averment in paragraph 19(1) of the further amended Statement of Claim. Thus whereas the land in dispute is the area covered by plots 28, 29, 32 and 33 in Exhibit K yet it was mistakenly referred to as the area verged BLACK in Exhibit K and paragraph 19(1). No evidence was led identifying the area verged BLACK as the land in dispute. In the result, I am bound to resolve issue two as it relates to declaration of title against the appellants because they failed to produce preponderance of evidence

which would entitle them to this discretionary relief. (p. 936 A)

Appeals - Order

10. I need not finally decide the question of trespass in this appeal because at p.13 of their brief, appellants indicated that since there is no positive evidence to determine the quantum of damages separately due to each of the appellants consequent to the respondents trespassory acts, they would abandon the second arm of their claim, that is to say, the relief for damages in trespass. Thus the proper order to make in respect of the claim for trespass in this appeal, bearing in mind that the claim for damages was dismissed by the lower court, is one of dismissal. (p. 937 D)

D Judgments - Injunction

11. On the third arm of Issue Two regarding the grant of Injunction, in the light of the mix-up in paragraph 19(1) of the further amended Statement of Claim I am bound to observe that the identity of the land to which an order of Injunction is to be tied in this case, to say the least, is nebulous and remains anybody's guess. In other words, an injunction cannot be granted in appellants' favour in respect of unspecified land. (p. 937 F)

F Courts - Adjudication

12. In view of the final order that I am about to make coupled with the aforesaid muddle in appellants' case precipitated by their learned counsel, the question of non-suit under Issue Three is bound to be a non-issue, and at best, an excursion on an academic exercise. A court of law is enjoined to adjudicate between parties in relation to their competing legal interests and never to engage in a mere academic discourse, no matter how erudite or beneficial it may be to the public at large See Union Bank v Edionseri (1988) 2 N.W.L.R. (Pt. 74) 93 and Julius Berger (Nig) Ltd v Femi (1993) 5 NWLR (Pt. 295) 612. In the result, the appeal fails and the claims for declaration of title, trespass and injunction are hereby dismissed. (p. 937 H)

REPRESENTATION

A. O. Odeleye for the appellants
Respondents were not represented.

CASES REFERRED TO

- A.T. Jules v Raimi Ajani (1980) 5-7 SC 96 B
Adelaja v Fanoiki (1990) 3 SCNJ 131
Cardoso v Daniel (1966) 1 All NLR 25
Ikoku v Oli (1962) 1 All NLR (vol. 1) 194 at 199
Idundun v Okumagba (1976) 1 NMLR 200 C
Kodilinye v Odu 2 WACA 336
Elias v Omo-Bare (1985) 5 SC 25 at pp 38-39
Omoregie v Idugienwaye (1985) 2 NWLR 41 at p. 60
Adimora v Ajufo (1988) 19 NSCC (Pt.1) 1005 D
Ogunleye v Oni (1990) 2 NWLR (Pt.135) 745
Yakassai v Incar Motors Ltd 5 SC. 107
Idika v Erisi (1988) 5 SCN J 208
Adeniji v Adeniji (1972) 4 SC 10 E
Ekpeyong v. Nyong (1975) 2 SC.71 at p. 80
Ademola v Sodipo (1992) SC NJ (pt. 11) 417 at pp. 446-447

STATUTES REFERRED TO

- Land Instruments Registration Law Cap 56 Laws of Oyo State, 1978; ss 18(1) - (5); 31(1) and (2) and 32(2) F
Land Titles Registration Laws Cap. 54, Laws of Oyo State, 1978; ss. 5 and 48
Evidence Act, ss.122, 129, 130, and 137(2) G
Survey Regulations, Cap. 123 Laws of Oyo State of Nigeria, 1978; Regulations 32 and 37

LEAD JUDGMENT BY ACHIKE JSC

The plaintiffs, herein referred to as appellants, claimed jointly and severally against the defendant, herein referred to as respondents, in paragraph 19 of the amended Statement of Claim as follows:

H

"1. Declaration of title to a statutory right of occupancy under the provision of Decree No. 6 of 1978 in respect of all that piece or parcel of land lying being and situate at Tabontabon village, off Ring Road, Ibadan, as per the plan No. FA/M/32A drawn by Licensed Surveyor A.O. Adebogun dated 16/11/79.

2. #200.00 general damages for a continuing trespass commenced since month of June, 1977 by the defendants, their agents and/or servants on the said landed property in Ibadan.

3. INJUNCTION restraining the defendants, their agents servants, privies and all those claiming through the defendants from committing further acts of trespass on or in any other way interfering with plaintiffs' ownership and/or possession of the said landed property."

It is necessary to draw attention to the fact that by the Ruling of this Court dated the 17th of June, 1994, appellants were granted leave to amend paragraph 19(1) of their Amended Statement of Claim to read as follows:

"19(1) Declaration of title to a statutory Right of Occupancy under the provision of Decree 6 of 1978 in respect of all that piece or parcel of Land particularly plots 28 and 29 property of Kola Ayodele suing by his Attorney, the third plaintiff, plot 32 property of first plaintiff plot 33 property of second plaintiff, all within Alade Layout, lying, being and situate at Tabontabon village, off Ring Road, Ibadan verged Black as per the plan No. FA/M/32A drawn by licensed surveyor A.O. Adebogun dated 16/11/79."

The plaintiffs' case as portrayed in their amended Statement of Claim was that sometime in 1957, the Alade Family established a layout of plots for sale of their family land at Tabontabon village near Ring Road, Ibadan. The family head and representatives were Adebayo Alade, Adetohun Alade (deceased) and Yesufu Alade (first defendant). The first plaintiff, Abiodun Adelaja bought six plots in the layout, i.e. plots Nos. 20,21,24,25,32 and 37 and was evidenced by a sale agreement dated 23/3/58 and a conveyance registered as No.53/53/259 of 16/6/58. The 2nd plaintiff, Abiodun Oyetubo bought plot No. 33 as witnessed by a Deed of conveyance registered as No. 48/48/353 and dated 4/12/59 while the 3rd

plaintiff, Kola Ayodele bought four plots, i.e. plots Nos. 16,17,28 and 29, as also witnessed by a deed of conveyance registered as 16/16/254 of 16/5/58. The eleven plots bought by the plaintiffs are as shown in survey plan FA/M/32A dated 21/1/78 prepared by A.O Adebogun, a licensed surveyor.

The plaintiffs have been put in possession and exercised acts of ownership on the land until 30/5/77 when 1st plaintiff saw 2nd defendant and two workmen constructing a building foundation on the land. The said building construction not only obstructed the proposed road within the Alade family layout but protruded at various places into plot No. 32, plot No. 33 and plot Nos 28 & 29 which are the respective properties of 1st, 2nd and 3rd plaintiffs. These interferences on the plaintiffs' plots of land triggered off this action.

In their statement of defence, the first defendant denied being a party to the execution of the documents of title pleaded by the plaintiffs, and except that he admits selling two plots of land to the 1st plaintiff but also denies that he trespassed on both plots. The second defendant denied liability as he was a workmen of the 1st defendant. The defence also stated that the plaintiffs' plan included areas of land already litigated upon in Adelaja (as attorney for Victor Oludemi) against Olatunde Fanoiki and Yesufu Alade, Suit No. 1/147/75, which suit was dismissed. It was also the defence case that the plaintiffs' plan included land not sold to them. It was also averred that the 3rd plaintiff was guilty of laches and acquiescence. Finally, the defence averred that the 1st and 2nd plaintiffs' claims to plots 32 and 33 were dismissed in suit No. 1/402/77, A. Adelaja & Anor v Yesufu Alade & Anor on 16/10/78 and consequently, in respect to these two plots, they rely on the plea of res judicata.

In the plaintiffs' amended reply to statement of defence they averred that the dismissal of Suit No. 1/402/77 was not on its merits and therefore could not support a plea of res judicata.

After due trial, the trial Judge, at p. 60 of the record made the following findings of fact:

"The area allegedly trespassed upon and the cause of dispute in the present action is the area verged Black in Exhibit "K". The building

which has been erected on the said area touches slightly plot 32 in the area verged green in exhibit "K" , claimed by the 1st plaintiff. It also touches plot 33 in the area verged blue in exhibit "K" claimed by the 2nd plaintiff. And so does it abutt (sic) on plots 28 and 29 in the area verged yellow in exhibit "K" claimed by the 3rd plaintiff."

Thereafter, judgment was entered in favour of the first and second plaintiffs on their declaration as sought but their claims for trespass and injunction were dismissed, whilst the case of the third plaintiff was dismissed in its entirety.

On appeal by both parties against the judgment of the High Court, the Court of Appeal unanimously held that 1st and 2nd appellants did not prove their title to the land in dispute. The court further held the appellants never proved that the parcels of land in dispute were within the Alade Layout Plan which they pleaded, and in the result, an order of non-suit was entered against the three appellants. Their appeal on trespass and injunction was dismissed. The cross-appeal of the respondents succeeded as the judgment of the High Court in favour of the 1st and 2nd appellants was set aside. In the final result, the appeal succeeded in part and the cross-appeal also succeeded partially.

It is against this decision of the Court of Appeal that this appeal is lodged to the Supreme Court only by the three appellants. They filed four original grounds of appeal which were amended, with leave of this Court, on 29/8/94 to include a fifth grounds of appeal. I do not find it necessary to reproduce the grounds of appeal. The appellants, in their brief, identified the following three issues for determination:

"(a) Did Exhibits D,E and F i.e. The Deeds of conveyance in favour of the Appellants pass title in the land in dispute as reflected in Exhibit K to the Appellants.

(b) Did the Appellants by the preponderance of evidence prove their case to entitle them to their claims for title, injunction and damages in respect of the disputed plots of land as reflected in their plan No. FA/M/32A drawn by licensed Surveyor A.O. Adebogun, dated 16/11/79.

(c) Whether the Court of Appeal was right to have non-suited the Appellants."

On examination of the grounds of appeal and the above issues formulated therefrom, it seems to me that the issues as set out above arise from the judgment of the lower court as well as the grounds of appeal and are sufficient for the determination of the appeal. The respondents filed no brief of argument in response to the appellants' brief and at the instance of the appellants this appeal was ordered to be heard on the appellants' brief alone. Respondents were not represented at the hearing of the appeal either. B

We now take off with arguments on Issue one. There is no doubt that the pivotal question in a declaration of title action founded on registered deed of conveyance of land, in a layout of plots of land is the burden and quantum of proof needful for the plaintiff to succeed. 1st appellant's registered conveyance of 16/6/58 was tendered in evidence as Exhibit D, that of 2nd appellant of 4/12/59 was admitted in evidence as Exhibit E while that of the 3rd appellant of 16/5/58 was received in evidence as Exhibit F. PW6, the appellants' surveyor prepared Exhibits K - the plan of the land in dispute - the composite plan on the basis of what he saw on the land and the plans attached to Exhibit D, E and F. The said Exhibit K was however never made with reference to the entire Alade Layout Plan. It is common ground that late A.T. Bicketsteth who prepared the Alade Layout plan was the same surveyor who made the plans attached to Exhibits D, E and F i.e. the deeds of conveyance. The deeds of conveyance and all the plans indicate that the plots of land contained therein are within the Alade Layout. C D E F

The Court of Appeal was in no doubt that by the combined effect of sections 18(1) - (5) And 31(2) of the Land Instruments Registration Law, Cap 56 Laws of Oyo State 1978 an instrument, including a deed of conveyance when registered, under this law, both the original and its certified true copy under the hand of the registrar in the land registry are admissible in evidence and constitute sufficient proof of its due execution. The leading judgment of Ogundere, JCA then continued, H

"It is only when a conveyance is registered under section 5 of the Land Titles registration law cap. 54, 1978 Laws of Oyo State that by virtue of section 48 thereof when pleaded and tendered in evidence of

title. Therefore unless so admitted in pleadings or at the trial its due execution must be proved unless the party concerned can pray in aid the presumption under section 130 of the evidence Act."

Notwithstanding the passing reference to sections 18(1) -(5) B And 31(2) of the Land Instruments Registration Law of Oyo State only in the leading judgment of the Court of Appeal, it seems to me very clearly that the effect of such "due execution" was not fully appreciated by the lower court and indeed constitutes an erroneous oversight of the requirements and provisions of sections 18(1) - (5) and 31(1) and (2) of C the aforesaid Law-of Oyo State. Therefore, the necessity of a close examination of the provisions of these sections becomes compelling. Section 18(1) - (5) provides:

D *"(1) Any person desiring that any instruments shall be registered shall deliver the same together with a true copy thereof and the prescribed fee to the registrar of the office.*

(2) The registrar shall, immediately after such delivery, place upon the instrument and upon the copy thereof a certificate, as in Form E B in the First Schedule.

(3) Unless the instrument is one which is declared by this law to be void or the registration of which is prohibited by this law, the registrar shall compare the copy of the instrument with the original and if he shall F find such copy to be a true copy and to comply with any regulations made under this Law and for the time being in force he shall certify the same by writing thereon the words "certified true copy" and appending his signature thereto.

G *(4) The registrar shall upon there register the instrument by causing the copy so certified to be pasted or bound in one of the register books and by indorsing upon the original instrument a certificate as in Form C in the First Schedule; and upon such registration the year, month, day and hour specified in the certificate indorsed on the instrument in pursuance H of sub-Section (2) shall be taken to be the year, month, day and hour at which instrument was registered.*

(5) The original instrument shall thereafter, upon application, be returned to the person who shall have delivered it for registration:

Provided that if application for the return of the instrument is not made within twelve months after the date of registration the registrar may destroy the instrument."

Section 31(1) provides:

"The Registrar shall upon request give a certified copy of any entry in such register book or register, or of any filed document."

While section 31(2) provides:

"Every such certified copy shall be received in evidence, without any further or other proof in all civil cases."

The resultant effect of the combined reading of sections 18(1)-(5) and 31(2) of the Land Instruments Registration Law is that once an instrument has been registered in accordance with sections 18(1)-(4), a certified copy of a conveyance so registered, and in compliance with section 31(2) "shall be received in evidence without any further or other proof in all civil cases." This construction accords with the decisions of this court in A.T. Jules v Raimi Ajani (1980) 5-7 SC 96 and Adelaja v Fanoiki (1990) 3 SCNJ 131. In both cases the Supreme Court reaffirmed the principle that a registered conveyance under the land Instruments Law is sufficient evidence of its due execution.

The lower court however stated that unless a conveyance registered under section 5 of the Law Titles Registration Laws of Oyo State is admitted in pleadings or at the trial, its due execution must be proved unless the party concerned can pray in aid the presumption under section 130 of the Evidence Act as to recitals etc. Reliance on section 5 of the Law Title Registration Law, in my view, after due compliance with sections 18(1)-(5) and 31(2) of the Land Instruments Registration Law in order to establish due execution of a registered conveyance is uncalled for. And as was pointed out in Adelaja v Fanoiki (supra) the question whether the deed of conveyance admitted in evidence is proof of its execution does not arise under the presumption of due execution set out under section 122 or 129 of the Evidence Act. On the contrary, the question of due execution of registered conveyances admitted in evidence in this

case as Exhibits D, E and F manifestly falls within the ambit of the provisions of section 32(2) of the Land Instruments Registration Law, Cap 56 Laws of Oyo State, 1978 Vol.III and they require no further proof - whether or not admitted in pleadings or at the trial
 B - as regards their due execution. See Cardoso v Daniel (1966) 1 All NLR 25. The effect of section 32(2) is indeed far-reaching. Thus when a conveyance has been duly executed under section 18(1)-(4) of the Land Instruments Registration Law, the mere denial by one of the executants of being a party to the execution cannot avail him
 C nor effect the validity of the registered conveyance because section 31(2) enjoins that even a certified copy of the conveyance registered in accordance with section 18(3) and (4) will be admitted in evidence without any further or other proof in all civil cases.

D It seems useful to take up the question of 1st respondent's denial of being a party to any of the documents relied on by the appellants in proof of the registered conveyances. Paragraph 3 of the Statement of Defence states:

E *"3. The 1st defendant is not a party to the various documents pleaded by the plaintiffs except that he admits selling 2 plots of land to the 1st plaintiff and he has not trespassed on both plots."*

No doubt, the relevant documents are Exhibits D, E and F, i.e. certified
 F copies of registered conveyances in favour of the appellants of which Exhibits H and R respectively are the originals of Exhibits D and E. In each of these exhibits the 1st respondent's thumb-print is clearly shown, yet he denied being a party thereto even though the jurat incorporated in the conveyance was duly made in the presence of a magistrate and its
 G content in the English language was read over and explained to the 1st respondent in Yoruba language by an interpreter before he affixed his right thumb-print. **In my opinion, the implication of 1st respondent's denial that it is his thumb-print that appears in Exhibit D, E, F, H
 H and R is tantamount to saying that these documents are a forgery or a fake. Of course, in such a situation the burden of proof of the forgery rests on the party who alleges. See section 137(2) Evidence Act. Since a crime is alleged, the standard of proof is demanding**

because the onus is on him who alleges to prove it beyond reasonable doubt. See Ikoku v Oli (1962) 1 All NLR (vol. 1) 194 at 199. 1st respondent has not led evidence to establish that he did not thumb-print Exhibits D, E, F, H and R, save his mere denial; accordingly, he has failed to prove that Exhibits D, E, F, H and R are a **forgery**. As we have noted earlier, it has been established that Exhibits D, E and F are certified true copies of deeds of conveyance duly executed and respectively in favour of the 1st, 2nd and 3rd appellants, and Exhibits H and R are the originals of Exhibits D and E executed in favour of the 1st and 2nd appellants respectively. **An Instrument is said to be duly executed when all acts necessary to render it complete and give it validity have been performed. Thus Exhibits D, E and F are valid conveyances respectively between 1st appellant and the 1st respondent's family, 2nd appellant and the 1st respondent's family and 3rd appellant and the 1st respondent's family. Exhibits D, E and F being certified true copies of deeds of conveyance that have been duly executed were properly received in evidence and required no further proof or other proof.**

The appellants having established due execution of Exhibits D, E and F, then, *prima facie* they have established their title, tracing it to the Alade Family. Learned appellants' counsel, Mr. A.O. Oduleye calls in aid the Supreme Court decision in Idundun v Okumagba (1976) 1 NMLR 200 wherein that court enumerated the five ways in which ownership of land may be proved, and one of them is by deed of conveyance. Referring to the second way in this regard, this court stated as follows:

"Secondly, ownership of land may be proved by production of documents of title which must, of course, be duly authenticated in the sense that their due execution must be proved."

Appellant have produced documents of title, Exhibits D, E and F which are duly authenticated and registered, and by virtue of section 31(2) of the Land Instruments Registration Law of Oyo state they require no further proof of execution. The court below was manifestly in error in holding that Exhibits D, E and F which are regis-

tered deeds of conveyance were not prima facie evidence of title to land. Appellants, as plaintiffs, who claim declaration of title must succeed or fail on the strength of their own case see Kodilinye v Odu 2 WACA 336. The appellants' case is hinged entirely on Exhibits D, E and F. It has been established in this judgment that Exhibits D, E and F were duly executed and thereby established appellants' title to plot Nos 32, 33, 28 and 29 as shown in litigation plan, Exhibit K.

It may be recalled that one of the reasons why both the High Court and the Court of Appeal found against the appellants was that the appellants did not relate their composite litigation plan, Exhibit K to the Alade Layout Plan which the land in dispute forms part. In the same vein, the Court of Appeal held the view that if the Alade Layout plan was produced by the appellants and superimposed on the survey plans in exhibits H and R i.e. the originals of Exhibits D and E and proved as part of the layout, the appellants' claims should have succeeded. The above opinion is predicated on the evidence of PW6, Adesina Olufemi Adebogun, appellants' surveyor who testified that he did not use the Layout plan in preparing plan comprised in Exhibit K and therefore it would be difficult for him to say whether the plots reflected in Exhibits D, E and F fell within the Alade Layout plan. On this point, learned appellants' counsel submitted that this opinion of the Court of Appeal was based on the misconception of the issue involved in this case. First, the identity of the land in dispute both from the parties' pleadings and evidence as not in controversy and secondly, the combined effect of Regulations 32 and 37 of Survey Regulations (Cap 123 Laws of Oyo State of Nigeria 1978) PW 6, not being the maker of the Alade Layout plan, PW6 was not competent to obtain or possess the said plan. To the second point I shall return anon.

I consider it proper to state that where there is no dispute as to the identity or particular location of the parcel of land in dispute failure to file a plan would not necessarily be detrimental to a claim for title, damages for trespass or injunction in so far as from the description of the land in controversy it is apt for a court to determine, with certainty, the particular area where an order will

be made. In this case, a plan, Exhibit K was filed with the amended Statement of claim which was never challenged by the respondents either in their pleading or in evidence as not reflecting the area in dispute, nor did they file any plan with their Statement of Defence reflecting a different area as the land in dispute. It is now trite ^B that when a fact is not denied, it is deemed admitted. See Ogunleye v Oni (1990) 2 NWLR (Pt.135) 745. For the same reason, where the appellants pleaded and served the respondents a survey plan, which subsequently was admitted in evidence as Exhibit K, which ^C showed the boundaries and the features of the land in dispute, these will constitute sufficient proof of the boundaries and features set out in the land in dispute. Therefore, where the respondents intend to challenge or dispute such boundaries or features they must do so by specifically traversing the appellants' pleading in this regard ^D because a simple or mere general traverse will be insufficient. See Elias v Omo-Bare (1985) 5 SC 25 at pp 38-39, Omoregie v Idugienwaye (1985) 2 NWLR 41 at p. 60 and Adimora v Ajufo (1988) 19 NSCC (Pt.1) 1005. Since there was no specific traverse or challenge ^E of the boundaries of the land in dispute as set out in Exhibit K, then the admission of Exhibit K in evidence tantamounts to sufficient proof of the boundaries and features therein. In the result, the respondents must be taken to have admitted the correctness ^F and accuracy of the dimensions and boundaries of the land in dispute as reflected in the appellants plan filed with their amended statement of claim and admitted in evidence as Exhibit K. And, if needed, the converse was sought to be made by the respondents, they would either have introduced in evidence the Alade Layout plan or caused ^G a separate plan of the land in dispute to be made and tendered in evidence. This they also failed to do, as earlier noted, having neither contested positively or obliquely that the plan Exhibit K did not reflect part of the Alade Layout in dispute nor did they plead or lead evidence to that effect ^H at the trial court. It is however clear that the issue of super-imposition of the Alade Layout plan on the appellants' composite plan was introduced by the two lower courts and not by the respondents.

This Court has repeatedly pointed out that it is not open to the court to introduce new issues which do not arise from the parties' pleadings. Any decision based on issues not raised by the parties will not be allowed to stand; see Yakassai v Incar Motors Ltd 5 SC. B 107, Idika v Erisi (1988) 5 SCNJ 208 and Adeniji v Adeniji (1972) 4 SC 10.

There remains a second point that calls for consideration, albeit briefly, under this issue which complains about failure of the appellants to produce a copy of the Alade Layout plan. Regulation 37 of the Survey Regulation Law of Oyo State of Nigeria 1978 provides as follows:-

"Copies of plans submitted by licensed surveyors under Regulation 32 shall be made available for purchase only to surveyors who lodged the particular plans and to persons for whom the surveys were made or D their legal representatives at the prescribed rates.

The above provisions clearly preclude PW 6, the appellants' licensed surveyor from procuring the Alade Family Layout plan which was prepared by another surveyor, one A.T. Bickersteth. It follows that if any one was E to obtain the Alade Layout Plan, then, certainly, it was the 1st respondent for whose family's benefit the plan was made. In my view, in the face of the unchallenged composite plan, Exhibit K, the need to procure the Alade Layout plan did not arise moreso when the plans attached to Exhibits D, F E, F, H and R prepared by A.T. Bickersteth, the maker of the Alade F Layout plan, clearly stated that the numbered plots of land contained in the respective plans are also within the Alade Layout plan. This is sufficient proof on the part of the appellants that the vexed plots of land, reflected in Exhibit K, which was prepared from the aforesaid plans, fall G within Alade Layout plan. Any view to the contrary will shift the burden of proof of the specific plans on the respondents and can only be discharged by production of their Alade family Layout plan, or make their own litigation plan. This the respondents failed to do.

H The sum total of the above discussion on issue one is that Exhibits D, E and F, the deeds of conveyance respectively in favour of the appellants passed title to the land in dispute to the appellants, as shown in Exhibit K.

Finally, it is worthy of note that even without the much-talked desire for superimposition of Exhibit K on the Alade Family Layout plan, the learned trial Judge, from the pleadings and evidence before him, made lucid findings of the land in dispute and consequently trivialized the necessity for the exercise of superimposition. These unchallenged findings B had earlier been produced in this judgment and no good reason calls for their further reproduction. Clearly, the peculiar circumstances of this case wherein the parcels of land comprising the land in dispute form part of a larger area within a plotted layout, hardly make superimposition need- C ful.

This brings me to the second issue which seeks to determine whether the appellants established preponderance of evidence to entitle them to their three-pronged claims for title, injunction and damages in respect of the disputed plots of land reflected in their plan No. FA/M/ D 32A, Exhibit K. With regard to their claim for title their learned counsel recapitulates the submission in this regard earlier canvassed under issue one and urges the court to decree a declaration of title in appellants' favour in respect of the land in dispute and specifically, plot 32 in favour E of 1st appellant, plot 33 for 2nd appellant while plots 28 and 29 for 3rd appellant. He further submits that it has not been established by evidence that 3rd appellant was guilty of laches and acquiescence. Secondly, counsel F submits, as may be confirmed from Exhibit K, that the erection of the building shown in area verged Black constituted trespass on the aforementioned appellants' plots of land. Since the appellants were in exclusive possession they were entitled to action in trespass for damages. Concluding the argument on issue two, learned counsel submitted that G appellants are entitled to an order of injunction to enable them restrain the respondents from committing further acts of trespass on the land in dispute or in any other way interfering with the appellants' ownership and possession of the said land in dispute.

As we had earlier shown under issue one, and there is no com- H pelling reason to rehearse the submissions, appellants have successfully proved that there were due executions of Exhibits D, E and F by which they were vested with some plots in the Alade Family Layout. See Jules

v Ajani (supra) and Adelaja v Fanoiki (supra). With proof of due execution of their respective deeds of conveyance which require no further proof of due execution, appellants would have been entitled to a claim of declaration because they relied on the strength of their own case based
B entirely on Exhibits D, E and F. See Idundun v Okumagba (supra).

However this does not conclude the discussion on declaration of title under issue two. A final resolution on this aspect of issue two has been confounded by the further amendment granted by this Court to the appellants to amend paragraph 19(1) of their Amended Statement of Claim.
C I have earlier in this judgment reproduced the said amended paragraph 19(1). For purposes of emphasis, clarity and ease of reference I would wish again to set out paragraph 19(1) as amended. It reads:

*"19(1) Declaration of title to a statutory Right of Occupancy
D under the provision of Decree 6 of 1978 in respect of all that piece or parcel of land particularly plots 28 and 29 property of Kola Ayodele suing by his Attorney, the third plaintiff, plot 32 property of first plaintiff and plot 33 property of second plaintiff, all within Alade Layout, lying,
E being and situate at Tabontabon village, off Ring Road, Ibadan verged Black as per the plan No. FA/M/32A drawn by licenced surveyor A.O. Adebogun dated 16/11/79." (Emphasis supplied by me)*

Whereas a look at Exhibit K visibly shows that the area of the land in dispute comprises plots 28 and 29 which are within the area verged YEL-
F LOW, plot 32 which is within the area verged GREEN, and plot 33 which is an area verged BLUE yet I am clearly of opinion that the said land in dispute is definitely not verged BLACK as alleged in paragraph 19(1) produced above. The area verged BLACK in Exhibit K, in the NOTES on
G the top left hand side of Exhibit K is lucidly described as "portion trespassed upon by the Defendants and cause of dispute edged BLACK with Building under construction thereon." Indeed, the learned trial Judge had no difficulty whatsoever in identifying it when stating his findings of
H fact in relation to the area trespassed upon by the respondents. In the opening sentence of his findings (which had also been reproduced earlier in this judgment) his Lordship said, inter alia,

"The area allegedly trespassed upon and the cause of dispute in

the present action is the area verged Black in Exhibit K."

This finding was in keeping with the appellants' pleaded facts and evidence led at the trial.

Strangely, the appellants' learned counsel sought and obtained from this Court an amendment to paragraph 19(1) of the Amended Statement of Claim (reproduced herein in the last paragraph above) wherein declaration of title was sought for the area verged Black as per the plan No. FA/M/32A drawn by licensed surveyor A.O. Adebogun dated 16/11/79." (Emphasis supplied by me) we have also shown earlier that the area verged BLACK is the area trespassed by the respondents, the cause of this action but by no stretch of imagination could this peripheral portion trespassed upon by the respondents constitute the larger area for which declaration of title was intended to be sought. As if this is not enough, a quick glance at the area verged BLACK in Exhibit K clearly shows that a larger part of the area verged Black lies on the proposed road within the Alade Family Layout. It is ridiculous for appellants' counsel to seek a declaration of title to a parcel of land clearly outside the area respectively conveyed to the appellants as adumbrated in Exhibits D, E and F.

The blunder on the part of counsel in this regard is of an unpardonable magnitude. Clearly, I think it is too late in the day to accommodate further amendment which could reflect the true state of affairs in this appeal. This Court, although it is the court of last resort, cannot suo motu venture to remedy the situation by tinkering the appellants' claim without eye-brows being raised in legal circles even though the mistake is manifest. After all, it is trite that parties as well as the court are bound by their pleadings and issues joined which are to be adjudicated by the court. As a necessary corollary, the court, not being a charitable institution, cannot award to a person either what he has not claimed or more than what he has claimed; see Ekpeyong & ors v Nyong & ors (1975) 2 SC.71 at p. 80, and Hon. Justice Adenekan Ademola v Chief Harold Sodipo & ors (1992) SC NJ (pt. 11) 417 at pp. 446-447.

It has earlier been shown that appellants' learned counsel has erroneously averred that the declaration of title prayed for is with regard to the area verged Black in Exhibit K. This generates a further complexity

to the appellants' claim because neither in their Amended of Claim nor in evidence was it stated that the verged Black belonged to the appellants jointly or as tenants in common to justify a declaration communally in their favour.

The net result of what I am saying is that appellants' claim for declaration of title to certain plots of land in the Alade Family Layout Plan, particularized as plot Nos. 28, 29, 32 and 33 as led in evidence, and fully supported by Exhibits D, E and F does not tally with paragraph 19(1) of their further amended Statement of Claim wherein the area on which declaration is sought to be pronounced is said to be the area 'verged BLACK on appellants' litigation plan No. FA/M/32A, drawn by licensed surveyor A.O. Adebogun dated 16/11/79.' As we have earlier noted, the area verged BLACK is simply the area trespassed upon by the respondents and in fact it includes a portion of Alade Layout Plan allegedly said to be an area for a proposed road within the area that the appellants are seeking a declaration of title to be made in their favour, and could not be because the area of the proposed road is clearly outside the area covered by appellants' plots Nos, 28, 29, 32 and 33. It is now well-settled, I think, that in an action for declaration of title to land, the identity of the said land must be ascertained with certainty. While a plan is not a sine qua non in all cases for declaration of title to land, nevertheless the land must be described with such degree of accuracy that the said parcel of land to which the declaration of title is sought to be tied cannot be in any doubt. Needless to say that the onus is on the plaintiff to establish the identity of the land in dispute. See Baruwa v Ogunsola 4 WACA 159 and Kwadzo v Adjei 10 WACA 274.

I am clearly of opinion that the appellants failed to discharged this onus placed on them of properly identifying the land in dispute in the face of the muddle or mix-up of their counsel in the averment in paragraph 19(1) of the further amended Statement of Claim. Thus whereas the land in dispute is the area covered by plots 28, 29, 32 and 33 in Exhibit K yet it was mistakenly

referred to as the area verged BLACK in Exhibit K and paragraph 19(1). No evidence was led identifying the area verged BLACK as the land in dispute. In the result, I am bound to resolve issue two as it relates to declaration of title against the appellants because they failed to produce preponderance of evidence which would entitle them to this discretionary relief. B

It will be recalled that appellants' claim for damages for trespass as well as injunction was dismissed by the two lower courts. We have highlighted the muddle by appellants' counsel with regard to the area verged Black which includes an area of land completely outside the area conveyed to appellants as reflected in Exhibits D, E and F. As we have also noted, the appellants did not show joint ownership of the land trespassed nor did they show that they are tenants in common with respect thereof. Undoubtedly, it is extremely difficult, in the face of the mix-up of the appellants' case for any court to award damages for the alleged acts of trespass by the respondents D

Be that as it may, I need not finally decide the question of trespass in this appeal because at p.13 of their brief, appellants indicated that since there is no positive evidence to determine the quantum of damages separately due to each of the appellants consequent to the respondents trespassory acts, they would abandon the second arm of their claim, that is to say, the relief for damages in trespass. Thus the proper order to make in respect of the claim for trespass in this appeal, bearing in mind that the claim for damages was dismissed by the lower court, is one of dismissal. F

On the third arm of Issue Two regarding the grant of Injunction, in the light of the mix-up in paragraph 19(1) of the further amended Statement of Claim I am bound to observe that the identity of the land to which an order of Injunction is to be tied in this case, to say the least, is nebulous and remains anybody's guess. In other words, an injunction cannot be granted in appellants' favour in respect of unspecified land. G

Issue No. 2 is accordingly resolved against the appellants.

In view of the final order that I am about to make coupled

with the aforesaid muddle in appellants' case precipitated by their learned counsel, the question of non-suit under Issue Three is bound to be a non-issue, and at best, an excursion on an academic exercise. A court of law is enjoined to adjudicate between parties in relation to their competing legal interests and never to engage in a mere academic discourse, no matter how erudite or beneficial it may be to the public at large See Union Bank v Edionseri (1988) 2 N.W.L.R. (Pt. 74) 93 and Julius Berger (Nig) Ltd v Femi (1993) 5 NWLR (Pt. 295) 612.

In the result, the appeal fails and the claims for declaration of title, trespass and injunction are hereby dismissed. There will be no order as to costs as respondents neither filed brief nor were present at the hearing of the appeal.

BELGORE JSC

I find no merit in this appeal. The appellants seem to claim title and in that wise challenging the right of their overlord. I agree with my learned brother, Achike, JSC., that this appeal deserves only dismissal. For the same reasons adumbrated in his judgment, I also dismiss the appeal with no order as to costs.

OGUNDARE JSC

I agree with my learned brother, Achike JSC that this appeal fails and that it be dismissed. I also agree that plaintiffs' claims be dismissed.

They sought and obtained in this court an order amending their claim (1) which now reads:

"19(1) Declaration of title to a statutory right of Occupancy under the provision of Decree 6 of 1978 in respect of all that piece or parcel of land particularly plots 28 and 29 property of Kola Ayodele suing by his Attorney, the third plaintiff, plot 32 property of first plaintiff and plot 33 property of second plaintiff, all within Alade Layout, lying,

being and situate at Tabontabon village, off Ring Road, Ibadan verged Black as per the plan No. FA/M/32A drawn by licenced surveyor A.O. Adebogun dated 16/11/79."

The land to which they now seek a declaration of title, damages for trespass and an injunction is the land the learned trial Judge found to be as follows:

"The area allegedly trespassed upon and the cause of dispute in the present action is the area verged Black in Exhibit 'K'. The building which has been erected on the said area touches slightly plot 32 in the area verged green in exhibit 'K' , claimed by the 1st plaintiff. It also touches plot 33 in the area verged blue in exhibit 'K' claimed by the 2nd plaintiff. And so does it abut on plots 28 and 29 in the area verged yellow in exhibit 'K' claimed by the 3rd plaintiff."

That same land is edged black on Exhibit 'K'. The plaintiff, however, led no evidence as to their entitlement to this piece or parcel of land which partly abuts on portions of land conveyed to them by the Alade family by virtue of Exhibits D,E & F, and lies partly on the proposed road which does not belong to the plaintiffs by virtue of their deeds of conveyance. Had their claims been confined to the plots conveyed to them, the result of this appeal might have been different. Their pleadings and evidence were directed to proving their title to such plots. Strangely enough, however, they changed their stand in this Court and now to lose their claims.

It is for the above reason that I agree with my learned brother that plaintiffs must fail in their claims. I too dismiss these claims as well as their appeal to this court. The defendants did not file a brief of argument nor did they take part in the oral hearing of the appeal. I consequently make no order as to costs in their favour.

ONU JSC

My learned brother Achike, JSC has given a careful consideration to all the points that arose for our scrutiny in this case and I share his views that the appeal must perforce fail.

It is a case for declaration of statutory right of occupancy, general damages for continuing trespass and injunction. Later, the appellants amended their Statement of Claim wherein they pleaded in paragraph 19(1) thereof thus:

B "19(1) Declaration of title to a statutory Right of Occupancy
under the provisions of Decree 6 of 1978 in respect of all that piece or
parcel of land particularly plots 28 and 29 property of Kola Ayodele
suing by his Attorney, the third plaintiff, plot 32 property of first plain-
C tiff and plot 33 property of second plaintiff, all within Alade Layout,
lying, being and situate at Tabontabon village, off Ring Road, Ibadan
verged Black as per the plan No. FA/M/32A drawn by licenced Surveyor
A.O. Adebogun dated 16/11/79." (underlining is mine for comment)

D As can be seen, the above amendment had brought a new di-
mension to the case of the appellants in that they are this time around
seeking a declaration of title to a parcel of land clearly outside the area
respectively conveyed to the appellants by deeds, vide Exhibits D, E and
F, which unquestionably would be accepted as evidence or proof of their
E entitlements thereto without more on the authorities of Jules v. Ajani
(1980) 5-7 SC. 96 and Adelaja v. Fanoiki (1990) 2 NWLR (Part 131)

In all, the appellants bought eleven plots as shown in survey plan
No. FA/M/32A dated 21/1/78 (vide Exhibit 'K') drawn by A.O. Adebogun,
F a licenced Surveyor. Looking at Exhibit 'K', the land thereon edged Black
covers plots 28 and 29, a proposed road or vacant land not belonging to
any of the appellants as well as a small tip of plot 33. Neither in the
Statement of Claim nor in the evidence led at the trial, was it stated that
the land belonged to the appellants jointly or, as tenants in common. Be-
G sides, Exhibit 'K' i.e. the appellants' plan, was never made with reference
to the entire Alade Layout Plan. As in their Amended Reply to the Re-
spondents' Statement of Defence, the appellants averred that the dis-
missal of Suit No. 1/402/77 involving plots 32 and 33 which were parts
H of the original eleven plots within the Alade Family layout - respective
properties of 1st, 2nd and 3rd appellants alleged to have been trespassed
by the respondents - was not on its merits and therefore could not sup-
port a plea of res judicata, it is clear that from Exhibit 'K' that a greater

portion of the land never belonged to either all or any of the appellants nor in their possession.

Thus, the court below was perfectly correct, in my view, before proceeding to dismiss the appellants' action in trespass and injunction, partially allowing 3rd appellant's appeal affirming his land - holding by Exhibit F and entering a non-suit against all three appellants with N450 costs to the respondent/cross-appellant and N200 costs to the appellant/cross-respondent, when it held as follows:-

"As to the dismissal of the plaintiffs' case in trespass and injunction based on the discrepancies between Exhibit J, K, and L it was admitted that Exhibit K is the survey plan in support of plaintiffs' case. Where the plaintiffs present a plan which varies with other plans tendered by the same plaintiffs and gave evidence which rendered exhibit K unreliable, no declaration should be made in plaintiffs' favour. Those inconsistencies were pointed out in the address of the respondent's Counsel in court as can be seen in the record page 45 lines 25 to 30 and page 46 lines 1-18. In this regard, the defendants had no onus to prepare a counter plan, it is the plaintiffs who should prove their case. As there were differences between exhibit J,K,L, the learned trial Judge was right to dismiss the plaintiffs' claim to an injunction as a court would not grant an injunction in respect of an uncertain area of land. Kwadzo v. Adjei 10 WACA 216; Ezeokeke & Ors. v. Uga (1962) 1 All NLR 482"

I cannot agree more. The claims for trespass and injunction were therefore in my opinion, rightly dismissed.

For these reasons and the more elaborate ones contained in the leading judgment of my learned brother Achike, JSC I too dismiss the appeal and make the same consequential orders inclusive of those as to costs.

KALGO JSC

In the trial Court, High Court Ibadan, the appellants as plaintiffs claimed against the respondents jointly and severally, a declaration of title to statutory right of occupancy of parcel of land at Tabon-tabon village

Ibadan, damages for trespass and injunction restraining the respondents form further acts of trespass. At the end of the trial, the claim of the 1st and 2nd appellants for declaration only succeeded but the claims of all the appellants for damages and injunction failed and were dismissed by the learned trial judge, Ademakinwa J. The appellants then appealed to the Court of Appeal, Ibadan Division, and the respondents also cross-appealed.

After hearing the parties, the Court of Appeal by a judgment delivered on the 20th of March, 1992, non-suited the appellants on their claim for declaration and their appeal on trespass and injunction dismissed. They appealed to this Court on 5 (five) grounds and formulated 3 (three) issues for determination in their brief of argument which was filed on 29th of August, 1994. The respondents did not file any brief and were absent at the trial and were not represented.

In the appellants' amended statement of claim paragraph 19 (1) the relief for declaratory order reads:-

"A declaration of title to a statutory right of occupancy under the provision of Decree No. 6 of 1978 in respect of all that piece or parcel of land lying being and situate at Tabontabon village, off Ring Road, Ibadan, as per the plan No. FA/M/32A drawn by licenced surveyor A.O. Adebogun dated 16th November, 1979".

However by a ruling of this Court dated 17th June, 1994, the appellants were granted leave to amend paragraph 19 (1) of their amended statement of claim to read as follows:-

"Declaration of title to a statutory Right of occupancy under the provision of Decree 6 of 1978 in respect of all that piece or parcel of land particularly plots 28 and 29 property of Kola Ayodele suing by his Attorney, the third plaintiff, plot 32 property of first plaintiff and plot 33 property of 2nd plaintiff, all within Alade Layout, lying, being and situate at Tabontabon village, off Ring Road, Ibadan Verged black as per the plan No. FA/M/32A drawn by licenced surveyor A.O. Adebogun dated 16/11/79." (Underlining Mine).

Earlier, the learned trial judge, in his judgment on page 60 of the record of appeal found that:-

"The area allegedly trespassed upon and the cause of dispute in the present action is the one Verged Black in Exhibit "K". The building which has been erected on the said area touches slightly plot 32 in the area Verged green in exhibit "K" claimed by 1st plaintiff. It also touches plot 33 in the area verged blue in Exhibit "K" claimed by 2nd plaintiff. B And so does it about on plots 28 and 29 in the area Verged Yellow in Exhibit "K" claimed by the 3rd plaintiff." (Underlining mine).

It is very clear from this finding that even before the amendment to paragraph 19 (1) of the amended statement of claim, the learned trial judge had identified the fact that the land to which declaration of title is being sought is the area verged black in Exhibit "K". And as was explained in the finding of the learned trial judge, the area in dispute edged black covers parts of plots 28 and 29, and a small tip of plots 32 and 33. C If one examines the plan Exhibit "K", one finds that the land edged black covers the area of a proposed road and some vacant land which does not belong to any of the appellants or any body else. There is no evidence on the record to link it with any of the appellants either jointly or severally, directly or indirectly. In the circumstances, it would be absurd and unsupported for any Court or Tribunal to award a declaration in respect of it to any body not entitled thereto. D

The amendment ordered by this Court to paragraph 19 (1) of the appellants' amended statement of claim clearly made reference to the area "Verged Black" in the plan No. FA/M/32A which was admitted in evidence at the trial as Exhibit "K". It still reaffirmed the finding that the land to which declaration of title is being sought by the appellant is the area edged black in Exhibit "K". This has thrown back the appellants to a situation whereby they failed to prove that they owned or possessed the area in dispute, and cannot therefore be entitled to a declaration in respect thereof. E F G

For this and the more detailed reasons adumbrated by my learned brother Achike, JSC in his judgment, I also agree that there is no merit in this appeal. I dismiss the appeal in its entirety including the claims for trespass and injunction. I abide by the orders of costs made in the leading judgment. H