

**SUPREME COURT OF NIGERIA**

23RD JUNE, 2000. SC. 145/94

**CORAM:- A. G. KARIBI-WHYTE, U. MOHAMMED, A. I.  
IGUH, A. I. KATSINA-ALU, A. O. EJIWUNMI, JJSC.**

ADETUTU ADESANYA ..... APPELLANT  
AND

ALHAJI S. D. ADERONMU & 2 ORS. .... RESPONDENT  
(Executors and Trustees of the estate of the late  
Chief S. D. AKERE)

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***EVIDENCE*** - Sale of land - Purchase receipt and survey plan - Comparison of purchase receipt and Survey plan to ascertain the boundaries of the land sold - Is wrong

***LAND LAW*** - Boundaries of land - Common boundary - Where the parties own land along a common boundary - It is necessary to show and prove the precise boundary features along the common boundary.

***LAND LAW*** - Boundaries of land - How proved - The precise identity and extent of the land claimed may be established - By oral description of the land in dispute - Or by filing and tendering an accurate survey plan of the land

***LAND LAW*** - Boundaries of land - Onus of proof -The onus is on the plaintiff who seeks a declaration of title and or injunction - To show clearly the area of land to which his claims relate

***LAND LAW*** - Boundaries of the land - Before a declaration of title to land is given - The first duty of the claimant is to establish - The area of land to which his claim relates

***LAND LAW*** - Evidence - Declaration of title to land - Claim for - A plaintiff must succeed on the strength of his own case - And not on the

*weakness of the defendant's case - Unless the defendant's case support that of the Plaintiff*

**LAND LAW** - *Identity of land - And accuracy of the survey plan - Where these are not in dispute - The plaintiff will not need to prove the boundaries of the land*

**LAND LAW** - *Injunction - Boundaries of land - An order of injunction cannot be made in respect of an area of land - Whose boundaries are not properly identified*

**LAND LAW** - *Purchase receipt - Admissibility - Purchase receipt is admissible in evidence as a mere receipt - And not in proof of title to land*

**LAND LAW** - *Right of occupancy - Declaration of title - In granting a declaration of title over some land - The trial judge must confine himself to ascertaining the area - In respect of which the plaintiff has discharged his onus of proving title.*

**LAND LAW** - *Sale - Customary law - A written contract is not necessary to effect a valid sale - Payment of the purchase price coupled with delivery of possession of the land - Creates a valid sale*

**LAND LAW** - *Survey plan - Joining of issues - Where a defendant is desirous of joining issue with any aspect of a plaintiff's survey plan in respect of a land in dispute - What such a defendant must do.*

**LAND LAW** - *Title to land - Claim for - Declaration of title - What the plaintiff must establish - In order to succeed in such a claim.*

**LAND LAW** - *Title to land - Root of title - Once a party pleads and traces his root of title to a particular source - And the averment is challenged - What that party must establish in order to succeed*

**LAND LAW** - *Title to land - Traditional history - Where evidence of traditional history is found and accepted by the Court to be cogent - It is sufficient to support a claim for declaration of title to land*

### **FACTS**

In the High Court of Justice of Oyo State of Nigeria holden at Ibadan, the plaintiff instituted an action against the defendant claiming for a declaration of title to a Customary Right of Occupancy over all that piece or parcel of land situate at Apete Village, Ibadan, general damages for continuing trespass; and an order of injunction. The plaintiff's case as pleaded and testified to is based on sale under customary law. He purchased the land in dispute some time in 1971 from the Ayoade family through one Aderinola Ejide Ayoade, the then oldest member of the Ayoade family. Her ancestor, Akintunde was said to have acquired the land by first settlement after the Kiriji War. Aderinola Ejide died before the institution of the action. However, her son, Raimi Aiki, who testified as P.W. 6 in the suit confirmed that his mother, Aderinola Ejide, sold part of the land originally settled upon by Akintunde and comprising the land in dispute to the plaintiff. P.W. 6 explained that he joined in the execution of the agreement, Exhibit A, described as a purchase receipt in respect of this sale of the land in dispute by his mother, Aderinola Ejide to the plaintiff. The plaintiff had since been in peaceable possession of the land through his caretaker P.W. 5. The plaintiff's survey plan of the land in dispute, was pleaded and at the trial tendered in evidence as Exhibit D.

Sometime in 1983, the defendant without the leave and/or licence of the plaintiff invaded the land in dispute and bulldozed it. She further erected a wall fence and dug a foundation on the land preparatory to the erection of a building thereon. Despite repeated warnings, the defendant continued her acts of trespass on the land hence the action. The defendant for her part, claimed that she purchased the land in dispute some time in 1977 from the Akinbode family whose ancestor was said to have settled on the land before the Kiriji war. She went into possession of the land and dug a foundation preparatory to the erection of a building thereon. She had since applied for and was granted a cer-

tificate of statutory right of Occupancy in respect of the land in dispute by the Government of Oyo State.

At the conclusion of hearing the learned trial judge was obliged to non-suit the plaintiff for the sole reason that he considered the boundaries of the land in dispute not established. Dissatisfied the plaintiff appealed to the Court of Appeal, Ibadan Division. The Court of Appeal in a unanimous decision allowed the appeal and entered judgment for the plaintiff as claimed. Aggrieved by this decision of the Court of Appeal, the defendant has appealed to the Supreme Court raising a single issue. The plaintiff, during the pendency of the appeal was reported dead and an application for his substitution with his three executors and trustees' was duly granted.

**ISSUE FOR DETERMINATION**

"Whether on the evidence adduced by the plaintiff in this case there was any or sufficient proof of his title to the land in dispute."

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

***Title to land - Claim for***

1. The law is well settled that, to succeed in a claim for a declaration of title to land, the court must be satisfied as to-
  - (i) the precise nature of the title claim, that is to say, whether it is title by virtue of original ownership, customary grant, conveyance, sale under customary law, long possession or otherwise and;
  - (ii) evidence establishing title of the nature claimed. (p. 2381 B)

***Evidence - Declaration of title to land***

2. A plaintiff when claiming a declaration of title to land must succeed on the strength of his own case and not on the weakness of the defendant's case. If this onus is not discharged, the weakness of the defendant's case will not help him and the proper judgment will be for the defendant. The rationale behind this principle is that the plaintiff, having sought relief from the court but failed to establish his entitlement thereto, ought to have his claim rejected. See Cobblah V. Gbeke 12 W .A. C. A. 294.

However, this broad general principle of law does not naturally apply where the defendant's case itself lends support to that of the plaintiff and contains evidence on which the plaintiff is entitled to rely. See Josiah Akinola and Another v. Fatoyinbo Oluwo and others (1962) 1 All N. L. R. (part 2) 224 at 225. (p. 2381 D)

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***Sale - Customary law***

3. The land in dispute was held by the Ayoade family under customary law. Accordingly, no such thing as a written contract or conveyance was necessary to effect a valid sale thereof by the Ayoade family to the plaintiff. Payment of the agreed purchase price by the plaintiff coupled with delivery of possession of the land to him created a valid sale of the land by the Ayoade family to him under customary law. See Inua-na-Mallam Yaya v. Alhaji Mogoga (1947) 12 W.A.C.A. 132. (p. 2383 B)

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***Land law - Purchase receipt***

4. The receipt for the purchase of the land in dispute issued by the Ayoade family to the plaintiff was specifically pleaded and admitted in advance as Exhibit A. I have carefully studied Exhibit A and it is clear to me that it is an unregistered instrument and, as such, is not admissible to prove the plaintiff's title to the land sold to him. It is, however, admissible as a receipt or an acknowledgment of the payment of money in respect of the land by the plaintiff and, coupled with the delivery of possession of the land in dispute by the Ayoade family to the plaintiff, gave rise to an equitable interest which is capable of being converted into a legal estate by specific performance. See Isaac Ogunbambi v. Abowab (1951) 13 W.A.C.A 222, Lamidi Fakoya v. St. Paul's Church, Shagamu (1966) 1 All N.L.R. 74 etc. Exhibit A was rightly admitted in evidence in the present case as a mere receipt and not in proof of title to the land as the nature of the title relied upon by the plaintiff was that of sale under customary law and not by virtue of a conveyance. (p. 2383 D)

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***Title to land - Root of title***

5. The law is well settled that once a party pleads and traces his root of

title in a dispute over land to a particular source, and this averment, as in this case, is challenged, that party, to succeed as a plaintiff in the action, must not only establish his title to such land, he must also satisfy the court as to the title of the source from whom he claims to derive his title to the land. See Mogaji and others v. Cadbury Fry (Export) Ltd (1985) 2 N.W.L.R. (Part 7) 393. (p. 2384 B)

***Title to land - Traditional history***

6. Both parties in proof of the root of title of their respective grantors relied on evidence of traditional history. The importance of this aspect of the case cannot be overemphasised as evidence of traditional history, where this is found and accepted by the court to be cogent, is sufficient to support a claim for declaration of title to land. See Alade v. Lawrence Awo (1975) 4 S. C. 215 at 228. (p. 2384 D)

***Right of Occupancy - Declaration of title***

7. It cannot be in dispute that in granting a declaration of title to a statutory or customary right of occupancy over some land, a trial Judge should confine himself to ascertaining the area in respect of which the plaintiff has discharged his onus of proving title; if such area could be conveniently defined, the plaintiff would be entitled to an appropriate declaration. See Okon Owon v. Eto Ndon and others (1946) 12 W.A.C.A 71 at 74. (p. 2386 D)

***Boundaries of the land - Before declaration of title is given***

8. The law is well settled by a long line of authorities that before a declaration of title to land is given, the first duty of the claimant is to establish, quite clearly, the area of land to which his claim relates. The boundaries of the land to which the claim relates must be ascertained with a degree of precision and certainty, the test being whether a surveyor can from the record of proceedings produce a plan showing accurately the piece or parcel of land to which the decree of title has been given. See Ate Kwadzo v. Robert Adjei (1944) 10 W.A.C.A 274. (p. 2386 F)

***Land law - Injunction***

9. In the same vein an order of injunction, whether interlocutory or permanent, cannot be made in respect of an area of land whose boundaries are not properly identified. See Rotimi and others v. MacGregor (1971) B N.W.L.R. 289 at 292. Such an order may only be made and tied to a plan or to a clearly defined area but must be refused if the area of land to which it relates is uncertain. See Karama and Wiboko v. Aselemi and others (1938) 4 W.A.C.A 150. (p. 2387 A)

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***Boundaries of land - Onus of proof***

10. The onus is on the plaintiff who seeks a declaration of title to land and/or injunction to show clearly the area of land to which his claims relate. See Agbonifo v. Aiwereoba (1988) 1 N.W.L.R. 325. (p. 2387 C)

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***Boundaries of land - How proved***

11. The plaintiff, as I have stated, may discharge this onus by such oral description of the land in dispute that any surveyor, acting on such description, can produce a plan of the land in issue. See Baruwa v. Ogunshola (1938) 4 W.A.C.A. 159. The test of such of such oral description or evidence was laid down by Kingdom, C.J. in Kwadzo v. Adjei, (supra), as follows:-

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*"The acid test is whether a surveyor, taking the record could produce a plan showing accurately the land to which title has been given."* See too Makanjuola v. Balogun (supra).

This onus on the plaintiff to establish with definitive certainty the precise identity and extent of the land he claims may also be discharged by filing and tendering before the trial court, an accurate survey plan of the land in dispute drawn to scale by a licensed surveyor reflecting all the features on the land and showing clearly the boundaries, especially on the side in dispute. (p. 2387 D)

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***Boundaries of land - Common boundary***

12. Where the parties own land along a common boundary, it is neces-

sary to show and prove the precise boundaries features along that common boundary. see Udofia v. Afia (1940) 6 W.A.C.A. 216, Okorie v. Udom (1960) S.C.N.L.R. 326 etc. (p. 2387 H)

**B Pleadings - Survey plan**

13. Where the defendant is desirous of joining issue with any aspect of the plaintiff's survey plan in respect of the land in dispute, he must be quite clear and specific on the points in controversy as a mere general traverse will not do. In order to raise an issue of fact, whether with regard to the averments pleaded in a plaintiff's Statement of Claim or in respect of matters reflected in his survey plan, there must be a proper traverse. If a defendant refuses to admit a particular allegation in the statement of Claim or plan, he must state so specifically. see Lewis and Peat (N.R.L.) Ltd v. Akhimien (1976) 7 S.C. 157. This rule of pleadings is of tremendous importance as trial courts must limit themselves to the issues raised by the parties in their pleadings and not otherwise. See Metalimpex v. A. G. Leventis and Co. Ltd (1976) 2 S.C. 91. (p. 2388 A)

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***Declaration of title to land - Identity of the land***

14. In an action for a declaration of title to land, such as the present case, where the identity of the land and accuracy of the survey plan in respect thereof are not in dispute, the plaintiff will not need to prove the boundaries of such land and the features thereon as these, being uncontroverted and not in issue, must under the circumstance be treated as established. See Omoriegie and others v. Idugiemwanye and others (1985) 2 N.W.L.R. (Part 5) 41. It is plain to me in the present case that as the exact identity and boundaries of the land in dispute were sufficiently and more particularly delineated in the plaintiff's survey plan, Exhibit D, and therein verged red, the learned trial Judge, with respect, was in definite error to have held that the boundaries of the said land were not established. (p.2389 H)

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***Sale of land - Documents***

15. I think the court below, with respect, was quite right when in this regard it stated thus:-

*"Not having been tendered in evidence as a document of title or to show the limits or the area of the land sold to the plaintiff but only as a receipt for money paid, the learned trial judge, in my view, was wrong to compare Exhibit A (Receipt) with Exhibit D (Survey plan) to ascertain the boundaries of the land sold - boundaries already proved by evidence by Exhibit A itself. Exhibit A and Exhibit D in my view are incomparable. Being incomparable it is not, a fortiori, in any conflict with Exhibit D. For the purposes of proof therefore Exhibit A proved the payment of #1,250.00. Exhibit D proved the boundaries. Nothing less and nothing more."* (p. 2391 H)

### **REPRESENTATION**

O. A. Obiose Esq. for the appellant.

Alhaji A. Isola-Gbenla for the respondents.

### **CASES REFERRED TO**

Cobblah v. Gbeke 12 W. A. C. A. 294

Kodilinye v. Mbanefo Odu 2 W. A. C. A. 236 at 337

Orasanmi v. Idowu 4 F. S. C. 40

Griffin v. Talabi (1948) 12 W. A. C. A. 371

Ogunbambi v. Abowab (1951) 13 W.A.C.A 222

Alade v. Awo (1975) 4 S. C. 215 at 228

Olujebe v. Oso (1972) 5 S. C. 143 at 151

Nwosu v. Udeala (1990) 1 N. W. L. R. (part 125) 188

Idundun v. Okumagba (1976) 9-10 S. C. 227

Owon v. Ndon and others (1946) 12 W.A.C.A 71 at 74

### **LEAD JUDGMENT BY IGUH JSC**

The proceedings leading to this appeal were first initiated on the 14th day of February, 1984 in the High Court of Justice of Oyo State of Nigeria, holden at Ibadan . In that court, the plaintiff, chief S. D. Akere, H now deceased, instituted an action against the defendant claiming as follows:-

*"(a) A declaration of title to a Customary Right of Occupancy*

*over all that piece or parcel of farmland situate, lying and being at APETE VILLAGE IBADAN - a place about 15 kilometres to Mapo and within the rural area of Akinyele Local Government Council.*

(b) *Two Thousand Naira (N2,000) general damages for continuing trespass committed and still being committed by the defendant on the said land.*

(c) *An order of injunction restraining the defendant, her servants, agents or any person claiming through or under her from committing further acts of trespass on the said land,"*

C pleadings were ordered in the suit and were duly settled, filed and exchanged.

The case accordingly proceeded to trial and the parties testified on their own behalf and called witnesses.

D The plaintiff's case as pleaded and testified to is based on sale under customary law. He purchased the land in dispute some time in 1971 from the oldest member of the Ayoade family. Her ancestor, Akintunde was said to have acquired the land by first settlement after the Kiriji war.

E Akintunde was survived by three children, namely, Ayoade, Iwintunde and Igbinwale. After the death of Akintunde, Ayoade as his eldest child succeeded him as the head of the Akintunde family and made maximum use of the land in dispute. Iwintunde and Igbinwale predeceased Ayoade without any child surviving either of them. Thus, the

F land became the absolute property of Ayoade. The said Ayoade on her death, was survived by only one child, Aderinola Ejide who accordingly inherited the land in dispute but later sold it under customary law to the plaintiff. There was also the evidence of P. W. 4, Dauda Bello. He bought

G part of the land originally settled upon by Akintunde from one Lawani Lanlokun who was said to have purchased it from Ayoade. Aderinola Ejide died before the institution of this action. However, her son, Raimi Aiki, who testified as P.W.6 in the suit confirmed that his mother, Aderinola

H Ejide, sold part of the land originally settled upon by Akintunde and comprising the land in dispute to the plaintiff. P. W. 6 explained that he joined in the execution of the agreement, Exhibit A, described as a purchase receipt in respect of this sale of the land in dispute by his mother, Aderinola

Ejide to the plaintiff. The plaintiff bought the land in dispute for the sum of N1,250.00 and had since been in peaceable possession thereof through his caretaker, P.W. 5.

Some time in 1983, the defendant without the leave and/or licence of the plaintiff invaded the land in dispute and bulldozed it. She further erected a wall fence thereon and dug a foundation on the land preparatory to the erection of a building thereon. Despite repeated warnings, the defendant continued her acts of trespass on the land hence this action. B

The defendant, for her part, claimed that she purchased the land in dispute some time in 1977 from the Akinbode family whose ancestor was said to have settled on the land before the kiriji war. The traditional history of the land was related by D. W. I, Busari Adekunle, who traced how ownership of the land in dispute descended by inheritance from Akinbode down the line to one Lawani Ayoade. The defendant bought the land under customary law for the sum of N3,700.00 from Lawani Ayoade who was then the Mogaji and head of the Akinbode family. She duly paid the said purchase price and was issued with a receipt. She also went into possession of the land and dug a foundation preparatory to the erection of a building thereon. She had since applied for and was granted a certificate of statutory right of occupancy in respect of the land in dispute by the Governor of Oyo state. C D E

At the conclusion of hearing the learned trial Judge, Ademakinwa J. after a meticulous review of the entire evidence on the 28th day of January, 1988 held as follows: F

*As things are, it is my view that the plaintiff's claims fail in their entirety, but I am not convinced that the proper order to make in the circumstances wherein the plaintiff has substantially established his interest in the land but has only failed to properly identify the boundaries thereof is one of dismissal. I believe that an order of non-suit will be appropriate in the circumstances, but I would like to hear learned counsel on both sides in this regard".* G H

Having taken the addresses of counsel on the appropriate order to make, the learned trial Judge concluded thus:-

*"I am convinced that an order of non-suit would be more appropriate in the circumstances so as not to permanently deprive the plaintiff of his established interest in the whole area claimed. The plaintiff is accordingly hereby non-suited in this case."*

B It is evident that the learned trial Judge was obliged to non-suit the plaintiff for the sole reason that he considered the boundaries of the land in dispute not established. said he:-

C *"Be that as it may, as I have earlier observed, the Boundaries of the land as purchased by the plaintiff in 1971 have not been properly identified. I am therefore not satisfied that the plaintiff is entitled to the order for declaration sought. Similarly, although the claim for trespass is based on possession of the land and need not necessarily be tied to the success of the claim for declaration of title, there would still be the difficulty of identifying what area of land the plaintiff has been exercising possession over, where the boundaries thereof have not been properly identified. On this ground too, the claim for trespass must fail. And, of course, an order for injunction cannot also be made in respect of an area whose boundaries are not properly identified"*.

Earlier on in his judgment, the learned trial Judge had queried:-

F *"I would prefer the evidence of the 6th P. W. (which is in line with the pleadings) that Bello Ajileye bought portion of the land originally settled upon by Akintunde, But the question still arises as to what portion of the land originally settled upon by Akintunde was sold to Bello Ajileye and what portion of it was sold to the present plaintiff. As had been earlier mentioned, the 6th P. W. merely stated that the boundaries of the land sold to the plaintiff were delineated by cutting down the edges as the plaintiff was being put into possession."*

G Dissatisfied with this judgment of the trial court, the plaintiff lodged an appeal against the same to the court of Appeal, Ibadan Division. The Court of Appeal in a unanimous decision on the 26th March, H 1993 allowed the appeal and entered judgment for the plaintiff as claimed but with the award of damages for trespass to the plaintiff against the defendant which was assessed at N250.00. Aggrieved by this decision of the Court of Appeal, the defendant has appealed to this court.

The plaintiff, during the pendency of this appeal was reported dead and an application for his substitution with his three executors and trustees, to wit, Alhaji S. D. Aderonmu, prince K. G. Akere and Alhaji A. O. Olaogun was duly granted. I shall, from time to time, in the course of this judgment also refer to the defendant and the substituted plaintiffs B as the appellant and the respondent respectively. I shall also refer to the deceased plaintiff as the plaintiff.

Four grounds of appeal were filed by the appellant against this decision of the Court of Appeal. It is unnecessary to reproduce them in this judgment. It suffices to state that the parties pursuant to the Rules of C this court filed and exchanged their written briefs of argument.

The one issue distilled from the appellant's grounds of appeal set out on his behalf for the determination of this court is as follows-

*"Whether on the evidence adduced by the plaintiff in this case D there was any or sufficient proof of his title to the land in dispute."*

The respondents, on the other hand, submitted that the single issue, in their opinion, for the determination of this appeal is-

*"Has the Plaintiff/Respondent not adduced credible evidence in E proof of his title to and the identity of the land in dispute."*

I think both issues are substantially identical and cover the same area of land law that it would make no difference which of them is considered in the determination of this appeal. For the avoidance of doubt, F however, I shall adopt the issue formulated by the appellant in my determination of this appeal.

At the oral hearing of the appeal, both learned counsel for the parties adopted their respective briefs of argument and proffered additional submissions in amplification thereof. The main argument of learned G counsel for appellant, O. A. Obiose Esq, is that the traditional evidence relied upon by the plaintiff in the establishment of his root of title is, to say the least, "most unbelievable" and ought to be rejected. In the alternative, he submitted that the plaintiff failed to establish that the land in H dispute was the same piece or parcel of land which he purchased in 1971. Learned Counsel contended that the piece or parcel of Land shown in the respondents' survey plan of the land in dispute, Exhibit D, and the

purchase receipt, Exhibit A are in conflict as to boundaries. He pointed out that the land to which Exhibit A relates is described as being bounded on all sides by Ayoade family land whilst the land in dispute as shown in the plan, Exhibit D, is bounded by Akingbade family land to the east, Alofe family land to the south and Bello Ajileye land to the west. He therefore submitted that the land in dispute shown in Exhibit D cannot be the same land described in Exhibit A and said to have been purchased in 1971 by the plaintiff. He argued that the evidence adduced by the plaintiff was insufficient to prove his title to the land in dispute. He urged the court to allow this appeal.

Learned counsel for the respondents, Alhaji A. Isola-Gbenla in his reply submitted that the appellant's submissions referred to above are neither supported by the facts of this case nor by any applicable principle of law. He contended that neither in the pleadings nor in his oral evidence did the appellant join issue with the respondents in respect of the identity and/or boundary features of the land in dispute verged red in the respondents' plan, Exhibit D. On the contrary, there is abundant evidence on record that the identity of the land in dispute is well known to both parties. Learned counsel further stressed that the accuracy of the respondents' plan, Exhibit D, was not put in issue or challenged by the appellant at the trial. More importantly, learned counsel pointed out that it could not be correct to suggest that the survey plan, Exhibit D, is in conflict in terms of boundaries with the purchase receipt, Exhibit A. He explained that the boundary features of the land, the subject matter of the sale, was only provisionally described in Exhibit A as at the time of the sale of the land to the plaintiff. According to Exhibit A, the respondents' surveyor was later to produce an accurate plan of the land sold. He stated that this is what was done by the plaintiff by the production of Exhibit D. He drew attention to the fact that any reference to Ayoade's land in Exhibit A is synonymous with reference to Akintunde's land as Ayoade was a descendant of Akintunde. Learned counsel argued that the use to which Exhibit A could be put is restricted statutorily by section 16 of the Land Instruments Registration Law. This is because being an unregistered instrument, Exhibit A could not be used as evidence affecting land but only

as a receipt, He was of the view that the appeal lacked merit and ought to be dismissed.

I will now turn to the sole issue for determination in this appeal. This is whether, on the evidence adduced by the plaintiff in this case, there was any or sufficient proof of his title to the land in dispute. In dealing with this question, it will be necessary to recall some of the more important general principles of law which govern the award of title to land by the courts.

In the first place, **the law is well settled that, to succeed in a claim for a declaration of title to land, the court must be satisfied as to-**

- (i) **the precise nature of the title claim, that is to say, whether it is title by virtue of original ownership, customary grant, conveyance, sale under customary law, long possession or otherwise and;**
- (ii) **evidence establishing title of the nature claimed.**

See Emegwara v. Nwaimo and others 14 W. A. C. A. 347. Similarly, it is trite law that **a plaintiff when claiming a declaration of title to land must succeed on the strength of his own case and not on the weakness of the defendant's case. If this onus is not discharged, the weakness of the defendant's case will not help him and the proper judgment will be for the defendant. The rationale behind this principle is that the plaintiff, having sought relief from the court but failed to establish his entitlement thereto, ought to have his claim rejected. See Cobblah v. Gbeke 12 W. A. C. A. 294, Kodilinye v. Mbanefo Odu 2 W. A. C. A. 236 at 337, Nana Frempong 11 v. Nana Brempong 11 (1952) 14 W. A. C. A. 13. However, this broad general principle of law does not naturally apply where the defendant's case itself lends support to that of the plaintiff and contains evidence on which the plaintiff is entitled to rely. See Josiah Akinola and Another v. Fatoyinbo Olowo and others (1962) 1 All N. L. R. (part 2) 224 at 225, Frederick Oduaran and others v. Chief John Asarah and others (1972) 1 All N. L. R. (part 2) 137. The question that must now be asked is whether the plaintiff satisfied the court as to the precise nature of the title to the land in dispute that he claimed.**

As I indicated earlier on in this judgment, the precise nature of the plaintiff's case as pleaded and disclosed by evidence is straight and clear. It is based on sale under customary law. The land in dispute was said to have been sold to him in the presence of witnesses in 1971 by the Ayoade family who are undisputed descendants of Akintunde. The said Akintunde, on the other hand, originally acquired a much larger expanse of land which included the land in dispute by first settlement under customary law some time after the kiriji war. These were all carefully pleaded in paragraphs 4 - 12 of the plaintiff's amended Statement of Claim, as follows:-

"4. *The said farmland claimed and in dispute was formerly part of a larger parcel of farmland originally settled on by one, Akintunde (Alias Onigbodogi) after the Kiriji war.*

5. *That the said farmland originally settled on by Akintunde was Virgin forest and bounded by Akingbala family, Akinola family, Otunla family and Igbonla family but most of these families have sold their lands and are no more to be found in the area.*

6. *That Akintunde was a hunter and farmer and he settled on the land for farming purposes soon after the kiriji war.*

7. *That Akintunde used the land for farming, planting thereon, palm trees, kola trees, bamboo trees, gbodogi leaves and food crops.*

8. *The said Akintunde jointly with Akingbala found Onigbodogi Village in which he used to stay during his life time.*

9. *That Akintunde used the said farmland until his death generations ago and was survived by Igbinwale, Oniwinde and Ayoade who on becoming the head of the family became so popular that Akintunde family began to be called Ayoade family.*

10. *That after the deaths of Igbinwale and Oniwinde, the farmland devolved on Ayoade who, as head of family, used the farmland for over 60 years, cultivating it and planting palm trees, kola trees, gbodogi leaves, cocoa, orange trees, coffee and food crops.*

11. *That on the death of Ayoade, his daughter, Aderinola Ejide being the oldest of the family succeeded her father on the land and continued to use it as family property.*

12. *That sometimes in 1971, Ayoade family sold a portion of their said family farmland to the plaintiff according to Customary Law and the plaintiff having paid the purchase price in the sum of N1250, took immediate possession in the presence of witnesses amongst whom was Mr. Morakinyo. A written Receipt dated 16th June, 1971 was Later given to the plaintiff."* B

Copious evidence was led by the plaintiff and his witnesses in line with the averments in his pleadings. **The land in dispute was held by the Ayoade family under customary law. Accordingly, no such thing as a written contract or conveyance was necessary to effect a valid sale thereof by the Ayoade family to the plaintiff. Payment of the agreed purchase price by the plaintiff coupled with delivery of possession of the land to him created a valid sale of the land by the Ayoade family to him under customary law. See Inua-na-Mallam Yaya v. Alhaji Mogoga (1947) 12 W.A.C.A. 132, Orasanmi v. Idowu 4 F. S. C. 40, Elisha Griffin v. Joseph Talabi (1948) 12 W. A. C. A. 371.** D

**The receipt for the purchase of the land in dispute issued by the Ayoade family to the plaintiff was specifically pleaded and admitted in advance as Exhibit A. I have carefully studied Exhibit A and it is clear to me that it is an unregistered instrument and, as such, is not admissible to prove the plaintiff's title to the land sold to him. It is, however, admissible as a receipt or an acknowledgment of the payment of money in respect of the land by the plaintiff and, coupled with the delivery of possession of the land in dispute by the Ayoade family to the plaintiff, gave rise to an equitable interest which is capable of being converted into a legal estate by specific performance. See Isaac Ogunbambi v. Abowab (1951) 13 W.A.C.A 222, Lamidi Fakoya v. St. Paul's Church, Shagamu (1966) 1 All N.L.R. 74 etc. Exhibit A was rightly admitted in evidence in the present case as a mere receipt and not in proof of title to the land as the nature of the title relied upon by the plaintiff was that of sale under customary law and not by virtue of a conveyance.** E F G H

Another aspect of this case which deserves attention is the fact that both parties claim to be the owners of the land in dispute. The

plaintiff based his title on sale from the Ayoade family whose ancestor, Akintunde, was the original first settler on the land in dispute and therefore became the owner thereof under customary law. The defendant, on the other hand, traced her title to the land to the Akinbode family whose ancestor, Akinbode, was alleged to have acquired the same land in dispute by first settlement. Each of the parties thus claimed to have purchased the land in dispute from two different sources.

**The law is well settled that once a party pleads and traces his root of title in a dispute over land to a particular source, and this averment, as in this case, is challenged, that party, to succeed as a plaintiff in the action, must not only establish his title to such land, he must also satisfy the court as to the title of the source from whom he claims to derive his title to the land. See Mogaji and others v. Cadbury Fry (Export) Ltd (1985) 2 N.W.L.R. (Part 7) 393. Both parties in proof of the root of title of their respective grantors relied on evidence of traditional history. The importance of this aspect of the case cannot be overemphasised as evidence of traditional history, where this is found and accepted by the court to be cogent, is sufficient to support a claim for declaration of title to land. See Alade v. Lawrence Awo (1975) 4 S. C. 215 at 228, Olujebu of Ijebu v. Oso (1972) 5 S. C. 143 at 151, Nwosu v. Udeala (1990) 1 N. W. L. R. (part 125) 188, Idundun v. Okumagba (1976) 9-10 S. C. 227.**

The learned trial judge gave a very meticulous consideration to the conflicting traditional histories advanced by both parties and found that proffered on behalf of the plaintiff more cogent and acceptable. He was in no doubt that the plaintiff in the year 1971 purchased the land in dispute or, at least, a substantial portion thereof from the Ayoade family. Said the learned trial judge -

*"As far as the traditional history adduced by both parties in respect of the land in dispute is concerned, I believe that the evidence adduced by the Plaintiff is more credible, particularly as related by the 2nd and 6th P.W.s. I accept the evidence and hold as a fact that Akintunde originally settled on a parcel of land, much larger than and including that now in dispute, the Plaintiff having bought from Aderinola Ejide*

*who is a descendant of Akintunde, the original settler on the land, has obviously established a better title than the Defendant."*

He however, appeared to have some difficulty as to the precise boundaries of the land bought by the said plaintiff. He said -

*"Evidence has been led by the plaintiff to show that he was in possession of the land in dispute and had been using it through the 5th P.W. as caretaker, for agricultural purposes since 1971, which was some seven years before the coming into effect of the Land Use Act at the end of March, 1978. If the boundaries of the land as sold to him in 1971 had been properly established, I would have been inclined to hold that the Plaintiff is entitled to the possession of the land for use for agricultural purposes as if a customary right of occupancy had been granted to him by the Akinyola Local Government, wherein the land is located, as envisaged under section 36 (2) of the Land Use Act. That being case, I would have agreed with submission that the Plaintiff, having been deemed to have been granted customary right of occupancy by the appropriate Local Government, another right of occupancy whether customary or statutory, could not have been validly granted without the Plaintiff's customary right of occupancy being first revoked."*

A little later in his judgment, the learned trial Judge observed -

*"Be that as it may, as I have earlier observed, the boundaries of the land as purchased by the Plaintiff in 1971 have not been properly identified. I am therefore not satisfied that the plaintiff is entitled to the order for declaration sought. Similarly, although the claim for trespass is based on possession of the land and need not necessarily be tied to the success of the claim for declaration of title, there would still be the difficulty of identifying what area of land the Plaintiff has been exercising possession over, where the boundaries thereof have not been properly identified. On this ground too, the claim for trespass must fail. And, of course, an order for injunction cannot also be made in respect of an area whose boundaries are not properly identified."*

As I have stated, although the learned trial Judge had held that the plaintiff had proved his root of title and established a better title than the defendant, he was nevertheless of the view that the plaintiff's claims

must fail on the sole ground that the boundaries of the land he bought in 1971 did not appear to him established. Indeed, in his own words, if the boundaries of the said land were properly established, he would have been inclined to hold that the plaintiff was entitled to a customary right of occupancy in respect thereof. In other words, the learned trial Judge was prepared to grant to the plaintiff a declaration of title to a right of occupancy in respect of the land in dispute were he satisfied that its boundaries were established. This now brings me to the important question whether or not the learned trial Judge was right in holding that the plaintiff was unable to establish the boundaries of the land he claimed.

In this regard, the court below after a close analysis of the issue concluded thus:-

*"The conclusion, from all that have been said above, is that the boundaries of the land in dispute not having been put in issue, Exhibit D with or without the evidence by the P.W. 3 and P.W. 5 was sufficient in proof of the boundaries and features of the land in dispute."*

**It cannot be in dispute that in granting a declaration of title to a statutory or customary right of occupancy over some land, a trial Judge should confine himself to ascertaining the area in respect of which the plaintiff has discharged his onus of proving title; if such area could be conveniently defined, the plaintiff would be entitled to an appropriate declaration. See Oko Owon v. Eto Ndon and others (1946) 12 W.A.C.A 71 at 74. The law is well settled by a long line of authorities that before a declaration of title to land is given, the first duty of the claimant is to establish, quite clearly, the area of land to which his claim relates. The boundaries of the land to which the claim relates must be ascertained with a degree of precision and certainty, the test being whether a surveyor can from the record of proceedings produce a plan showing accurately the piece or parcel of land to which the decree of title has been given. See Ate Kwadzo v. Robert Adjei (1944) 10 W.A.C.A 274, Udekwu Amata v. Modekwe (1954) 14 W.A.C.A. 580, Ezeokeke and others v. Umunocha Uga and others (1962) 1 All N.L.R. (Part 3) 482, Olusanmi v. Oshasona (1992) 6 N.W.L.R. (Part 245) 22 at 28, Udeze v.**

Chidebe (1990) 1 N.W.L.R. (Part 125) 141, Makanjuola v. Balogun (1989) 3 N.W.L.R. (Part 108) 122 etc.

In the same vein an order of injunction, whether interlocutory or permanent, cannot be made in respect of an area of land whose boundaries are not properly identified. See Rotimi and others v. MacGrgor (1971) N.W.L.R. 289 at 292. Such an order may only be made and tied to a plan or to a clearly defined area but must be refused if the area of land to which it relates is uncertain. See Karama and Wiboko v. Aselemi and others (1938) 4 W.A.C.A 150, Jemiegbe Ifie and others v. Gebi and others (1965) N.W.L.R. 457 etc. The onus is on the plaintiff who seeks a declaration of title to land and/or injunction to show clearly the area of land to which his claims relate. See Agbonifo v. Aiwereoba (1988) 1 N.W.L.R. (part 70) 325, Onwuka v. Ediala (1989) 1 N.W.L.R. (Part 96) 182, Awote v. Owodunni (No. 2) (1987) 2 N.W.L.R. (Part 57) 366 at 371 etc.

The plaintiff, as I have stated, may discharge this onus by such oral description of the land in dispute that any surveyor, acting on such description, can produce a plan of the land in issue. See Baruwa v. Ogunshola (1938) 4 W.A.C.A. 159. The test of such of such oral description or evidence was laid down by Kingdom, C.J. in Kwadzo v. Adjei, (supra), as follows:-

*"The acid test is whether a surveyor, taking the record could produce a plan showing accurately the land to which title has been given."*

See too Makanjuola v. Balogun (supra).

This onus on the plaintiff to establish with definitive certainty the precise identity and extent of the land he claims may also be discharged by filing and tendering before the trial court, an accurate survey plan of the land in dispute drawn to scale by a licensed surveyor reflecting all the features on the land and showing clearly the boundaries, especially on the side in dispute. Where the parties own land along a common boundary, it is necessary to show and prove the precise boundaries features along that common boundary. see Udofia v. Afia (1940) 6 W.A.C.A. 216, Okorie v. Udom

(1960) S.C.N.L.R. 326 etc. Where the defendant is desirous of joining issue with any aspect of the plaintiff's survey plan in respect of the land in dispute, he must be quite clear and specific on the points in controversy as a mere general traverse will not do. In order to  
B raise an issue of fact, whether with regard to the averments pleaded in a plaintiff's Statement of Claim or in respect of matters reflected in his survey plan, there must be a proper traverse.

If a defendant refuses to admit a particular allegation in the statement of Claim or plan, he must state so specifically. see  
C Lewis and Peat (N.R.L.) Ltd v. Akhimien (1976) 7 S.C. 157, Nwadike v. Ibekwe (1987) 4 N.W.L.R. (Part 67) 718 at 741, Lawal Owosho v. Dade (1984) 7 S.C. 149 at 163. This rule of pleadings is of tremendous importance as trial courts must limit themselves to the issues  
D raised by the parties in their pleadings and not otherwise. See Metalimpex v. A. G. Leventis and Co. Ltd (1976) 2 S.C. 91, George v. Dominion Flour Mills Ltd. (1963) 1 S.C.N.L.R. 242, Alhaji Ogunlowo O, Prince Ogundare (1993) 7 N.W.L.R. (Part 307) 610 at 624. I will  
E now consider whether the survey plan of the land in dispute, Exhibit D, tendered by the plaintiff at the hearing of the suit was made an issue at the trial and whether, in particular, the boundaries of the said land in dispute as delineated in the plan, Exhibit D, were made an issue in the  
F case. It is convenient at this stage to examine the pleadings filed by the parties.

The plaintiff, in paragraphs 2 and 3 his amended Statement of claim, averred as follows:-

"2. The farmland in dispute which is situate at Onigbodogi Village Apete Area Ibadan is within the rural Area of Akinyele Local Government Council and is verged Red on Survey Plan No. LL 9594 of 2nd July 1984 while the area on which the defendant erected wall fence and dug a building foundation is the cause of dispute:

H 3. The said farmland claimed and in dispute is bounded by Alefe family land (sold to sundry people), Asayinka family land, Akingbala family land and Ayoade family land (sold to Bello Ajileye)."

The plaintiff's survey plan No. LL 9594 dated the 2nd July, 1984

was not only pleaded specifically, it was, at the trial tendered in evidence as Exhibit D. The piece or parcel of land purchased by the plaintiff from the Ayoade family in 1971 and said to be in dispute, is more particularly and accurately delineated in the said plan No. LL 9594 and is therein verged red. Within the said land in dispute is shown a building under construction by the defendant said to be the cause of action. The next issue must be how the defendant replied to the said averments in paragraphs 2 and 3 of the plaintiff's amended Statement of Claim.

The defendant's Statement of Defence contains 24 paragraphs. It must be pointed out, however, that not one single paragraph of the said Statement of Defence joined issue with the plaintiff's survey plan or the features therein neither with regard to its accuracy or the boundaries therein indicated. Put simply, the boundaries of the land in dispute were not put in issue by the defendant in his Statement of Defence. It is also note worthy that the defendant in his pleadings neither impeached the boundaries of the land sold to the plaintiff in 1971 as indicated in the survey plan No. LL 9594 nor did he plead or file his own plan putting the accuracy of Exhibit D in issue.

Attention must also be drawn to the fact that P.W. 2, Alhaji Lasisi Ali, the licensed surveyor who made Exhibit D testified before the trial court but was not challenged under cross-examination as to the accuracy of the survey plan. There was also the evidence of P.W. 3 and P.W. 5 who testified as to the boundaries of the land in dispute. The learned trial Judge after a thorough consideration of the evidence of P.W. 3 and P.W. 5 held, quite rightly in my view, as follows:-

*"In their evidence, the 3rd P.W and the 5th P.W stated that the land now in dispute is bounded by Akingbala family land, Alofo family land, Asayinka family land and Bello family land. This was substantially in conformity with the pleadings in paragraph 3 of the Amended Statement of claim, ....."*

**I think in an action for a declaration of title to land, such as the present case, where the identity of the land and accuracy of the survey plan in respect thereof are not in dispute, the plaintiff will not need to prove the boundaries of such land and the features**

thereon as these, being uncontroverted and not in issue, must under the circumstance be treated as established. See Omoregie and others v. Idugiemwanye and others (1985) 2 N.W.L.R. (Part 5) 41.

Where this court, per Kazeem, J.S.C. explained the position as follows -

B *"Another issue open consideration is whether the boundaries and features on the land in dispute were satisfactorily proved by the appellants. On this point it is not disputed that the appellants showed several features and the boundaries of the land in dispute on their survey plan - Exhibit 1. The licensed surveyor (P.W. 1) who prepared that survey plan testified that he was commissioned by the appellants to prepare the said plan and that they showed him all those features which he inserted therein..... The testimony was not challenged by the respondents. Moreover, the whole land of the appellants including the land in dispute*  
C *is clearly demarcated on the plan and verged pink, the land in dispute is verged yellow thereon ..... Having thus sufficiently delineated and identified the land in dispute in this case, I am of the view that the Court of Appeal was in error in saying that the appellants failed to establish the*  
D *features on, and the boundaries of the land in dispute."*  
E

**It is plain to me in the present case that as the exact identity and boundaries of the land in dispute were sufficiently and more particularly delineated in the plaintiff's survey plan, Exhibit D, and therein verged red, the learned trial Judge, with respect, was in**  
F **definite error to have held that the boundaries of the said land were not established.** In my view, the court below was absolutely right to have disturbed this erroneous finding of fact on the part of the trial court.

G Learned counsel for the appellant did also contend with considerable force that the contents of the receipt, Exhibit A, were in conflict with the plan, Exhibit D. He therefore submitted that the land described in Exhibit A is different from the land shown in Exhibit D. In the first  
H place, I need only state that this submission is neither borne out form the pleadings or the evidence before the court, nor from the findings of the trial court to the effect that the plaintiff had "substantially established his interest in the land" in dispute, and that " the plaintiff having bought the

land from Aderinola Ejide, who is a descendant of Akintunde, "the original settler on the land" had "obviously established a better title" to the land in dispute "than the defendant" but that the said plaintiff had failed to establish the precise boundaries thereof.

In the second place, Exhibit A which was only tendered in evidence as a receipt to prove payment of money did not pretend to recite the precise boundaries of the land sold to the plaintiff. All it did was generally to describe in the broadest possible terms the area of location of the land sold to the plaintiff. The relevant descriptive passage of the land in Exhibit A reads -

*"All that piece or parcel of land situate at farmland together with economic trees thereon at Apete Ibadan measuring 21/2 Acres at Apete Ibadan and the exact description, extent and plan of which both parties have hereby agreed shall be determined by the Purchaser's Surveyor but hereby agreed to be bounded on all sides by Ayoade's Family land".* (Underlining supplied for emphasis).

It is clear to me from the face of Exhibit A that the parties did not regard the above descriptive narrative as giving the exact identity or precise boundaries of the land sold. P.W. 6. Raimi Aiki, in his evidence which was accepted by the trial court testified as follows:-

*"My mother sold a parcel of land to the Plaintiff and myself and my two other brothers were witnesses to the transaction. The amount paid by the Plaintiff as purchase price was #1,500.00). The boundaries of the land sold to the Plaintiff were demarcated by cutting down the edges and the Plaintiff was put into possession. An agreement was then executed in favour of the Plaintiff. I thumbprinted the Agreement, which is Exhibit 'A'. The land was sold to the Plaintiff about 16 years ago".*

The plaintiff's surveyor was later to delineate more particularly the extent and exact boundaries of the land purchased by the plaintiff and produce a survey plan thereof. This was what the plaintiff's surveyor did when he produced Exhibit D. **I think the court below, with respect, was quite right when in this regard it stated thus:-**

*"Not having been tendered in evidence as a document of title or to show the limits or the area of the land sold to the plaintiff but*

*only as a receipt for money paid, the learned trial judge, in my view, was wrong to compare Exhibit A (Receipt) with Exhibit D (Survey plan) to ascertain the boundaries of the land sold - boundaries already proved by evidence by Exhibit A itself. Exhibit A and Exhibit D in my view are incomparable. Being incomparable it is not, a fortiori, in any conflict with Exhibit D. For the purposes of proof therefore Exhibit A proved the payment of #1,250.00. Exhibit D proved the boundaries. Nothing less and nothing more."*

In the final result and for all the reasons that I have given above it seems to me that the sold issue for the determination of this appeal must be resolved against the appellant. This appeal accordingly fails and the same is hereby dismissed with the costs to the respondents against the appellant which I assess and fix at N10,000.00.

#### KARIBI-WHYTE JSC

I have had the opportunity of reading in draft the leading judgment of my learned brother Iguh, JSC in this appeal. I agree entirely with his reasoning, and his conclusion dismissing the appeal. I also will, and hereby dismiss the appeal. Appellant shall pay N10,000 as costs of this appeal to the Respondents.

#### MOHAMMED JSC

I agree that this appeal has failed. I have had the privilege of reading the judgment just read by my learned brother, Iguh, JSC, and I agree with his reasoning and conclusion. I do not intend to add any opinion of mine in support of my learned brother.

The appeal is dismissed. I also award N10, 000. 00 costs in favour of the respondent.

**KATSINA-ALU JSC**

I have had the advantage of reading in draft the judgment of my learned brother Iguh, JSC in this appeal. I agree entirely with it. I also would dismiss this appeal with N10, 000. 00 costs to the Respondents.

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B

**EJIWUNMI JSC**

I had the opportunity of reading before now the judgment just delivered by my learned brother Iguh JSC, wherein he dismissed the appeal, being unmeritorious, I also would dismiss the appeal. It is manifest from the argument advanced for the appellant in this appeal cannot in law sway this court to overturn the decision of the court below. The main contention of the appellant that the identity of the land was not established by the respondents, became a non issue when the pleadings are properly examined. It would be seen that the identity of the land was not raised as an issue in the pleadings. Bearing in mind that it is settled law that parties and the court are bound by the pleadings and the issues joined thereon, a party cannot therefore be allowed to raise an issue not pleaded at the trial, and even on appeal. See Nkanu v. Omen (1977) 5 SC 13; Egbue V Araka (1988) 3 NWLR (pt. 84) 598.

C

D

E

Moreover from the facts that were carefully reviewed in the judgment of my learned brother, Iguh JSC, it is manifest that the land was well known to the parties.

F

As the appellant has not advanced any worthwhile argument to persuade me to uphold his appeal, it is also dismissed by me for the above reasons and the fuller reasons given in the leading judgment of my learned brother Iguh JSC. I also award the sum of N10,000.00 as costs in favour of the respondents.

G

H