

SUPREME COURT OF NIGERIA

8TH JUNE, 2001. SC. 191/1997

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

ALABA ONAGORUWA APPELLANT
AND
ADEROJU AKINREMI & 2 ORS. RESPONDENTS

***ACTIONS** - Relief sought - Damages and injunction - The appellants failed to prove - Any act by the respondent - On which such reliefs can be based - Despite his being the owner of the property (H 5)*

***LAND LAW** - Appeals - Title - Identity of land - Location and identity of the parcel of land - Was clearly stated in the survey plan - And the courts below were in error to hold otherwise - And to decline to declare plaintiff owner of the land (H 2)*

***LAND LAW** - Ownership of land - Once a party is proved to be the owner - Anyone who is on the land without his permission - Is a trespasser *ab initio* (H 3)*

***LAND LAW** - Trespass - Whether or not there has been actual trespass - Can only be determined by the evidence led at trial - And no such evidence was led in this case (H 4)*

***LAND USE ACT** - Transfer of Title - Governor's consent - Will not be required to make the transfer valid - If the transfer was concluded - Before the Land use Act came into force on 29th March 1978 (H 1)*

FACTS

The appellant as plaintiff instituted two separate suits against the 1st and 2nd respondent at the High Court Lagos. The two suits were consolidated and 3rd respondent was joined as co-defendant. The appellant claimed for a declaration of ownership of a parcel of land known

as plots 89, 91 and 93 Dacosta layout, Onike Lagos State as well as for damages for trespass and injunction against the respondents.

The plaintiff's claim to ownership was based on the Registration of Titles Law and he pleaded his root of title and tendered many exhibits concerning his registered title. He also filed composite plans to show the relative position of his land and that claimed to belong to the 3rd respondent. The plan however failed to show any area of encroachment between the two lands. The 1st and 2nd respondents claimed to be tenants of the 3rd respondent and the 3rd respondent denied trespassing on the appellant's land.

The trial Judge dismissed the claim entirely and the appellant thereupon appealed to the Court of Appeal which also dismissed his appeal. He has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether the identity of the plots of land in respect of which the plaintiff claimed declaration of title, perpetual injunction and damages for trespass is ascertainable.

2. Whether the lower court was right in law in declining to decree that the plaintiff is the owner of plots 89, 91 and 93 of Dacosta layout Onike, Iwaya, Lagos State.

3. Whether the lower court was right in law in holding that the defendants did not trespass on the plaintiff's land."

HELD: (unanimously allowing the appeal in part per lead judgement of UWAIFO JSC)

Transfer of title - Governor's consent

1. It is true that any transfer of title derived even under the Registration of Titles Law must receive the consent of the Governor from the day the Land Use Act, 1978 came into force in order to make the transfer or alienation valid. That is what ss.22 and 26 of the Land Use Act stipulate. But the transfer of plots 89, 91 and 93 in question in this case to the appellant by Oyenuyi Arolabu Oyesanya was concluded before the Land Use Act came into force on 29 March, 1978. Exhibit C which is the Transfer Instrument shows that it took place on 15th March, 1978 while

exhibit C1 shows that the document was already in the Land Registry on 28th March, 1978. That disposes of the argument on the Land Use Act. (p. 2065 C)

Land law - Appeals - Title

2. In the present case, the appellant did not need any other evidence than exhibits A, B, C, and C1 to establish his entitlement to the declaration he seeks as the first relief in this action. All he asks for is a declaration that he is the owner of the parcel of land known as plots 89, 91 and 93 DaCosta layout, Onike, Iwaya, Lagos State, covered by title No. MO 10246. Exhibit A and B show the root of title while exhibits C and C1 show the registration of title derived from that root. The said plots 89, 91 and 93 are delineated in survey plan No. CO87/72 drawn by a licensed surveyor, C. Olu Dawodu, wherein the dimension and area of each of the plots and the survey beacons demarcating each are clearly indicated. I have given these details to illustrate that the facts as to the identity and location of the parcel of land were available but the two courts below did not make use of them. The lower court was therefore in error to hold, as the trial court did, that the identity of the plots in question was not established. The area of each of those plots can easily be depicted in an enlarged form from the said survey plan No. CO 87/72 by any surveyor in a survey plan. Each plot is not only ascertainable, it is certain in identity. I answer issue 1 in the affirmative and issue 2 in the negative. (p. 2068 G)

Ownership of land

3. I accept the argument of appellant's counsel that once the appellant is shown to be the owner of those plots of land, contrary to the erroneous view of the lower court, he is in exclusive possession or has a right to such possession and that anyone who is on the land without his permission is a trespasser ab initio. (p. 2070 F)

Land law - Trespass

4. However, the question that there has been trespass on the land is a

conclusion that can only be reached upon the evidence available. That was how decision was reached in the case of *Madubuonwu v. Nnalue* (1992) 8 NWLR (pt 260) 440 cited by him, and similar cases. No argument was proffered to identify the evidence in support of the trespass committed by the respondents. The truth is that there is no such evidence in proof. So, apart from the weak ipse dixit of the appellant that the 1st respondent was occupying Nos. 146 and 147 (which are indeed plots 91 and 93) and that the 2nd respondent was occupying No. 145 (i.e. plot 89), there is nothing to actually demonstrate this by a proper survey plan showing encroachment particularly as the respondents throughout denied being on any part of the appellant's land. There is no evidence of any threat by any of them to invade the appellant's right to the said plots 89, 91 and 93 in L.G. DaCosta layout, Onike, Iwaya, Lagos State. (p. 2070 G/ 2072 C)

Actions - Relief sought

5. The appellant has been unable to prove any act of the respondents upon which an order of injunction and award of damages against them can be based. Had he succeeded in doing so, the respondents would have been adjudged trespassers since the appellant whose title to the land is not in doubt has accordingly established his right to possession by virtue of that title. (p. 2072 E)

NOTABLE POINTS OF INTEREST

UWAIFO JSC

1. Registered title - Status and advantage of
The advantage of registered title is that the purchaser can discover from the mere inspection of the register whether the vendor has power to sell the land and what the more important encumbrances are except in the case of what may be classified as overriding interest, as contained in s.52 of the Registration of Titles law, which bind the proprietor of registered land even though he has no knowledge of them and no reference is made to them in the register. Otherwise, a registered owner of land is not affected by notice of any unregistered estate, interest or claim affecting

the estate of any previous registered owner, nor is he concerned to inquire whether the terms of any caution or restriction existing before he was registered as owner of such land have been complied with: see s.54. Short of rectification of the register carried out in pursuance of s.61, a registered owner's title is indefeasible. It has been said that a register of title is an authoritative record, kept in a public office, of the rights to clearly defined units of land as vested for the time being in some particular person or body and of the limitations if any, to which these rights are subject. With certain exceptions known as 'overriding interests', all the material particulars affecting the title to the land are fully revealed merely by a perusal of the register which is maintained and warranted by the State. The register is at all times the final authority and the State accepts responsibility for the validity of transactions, which are effected by making an entry in the register. (p. 2067 G)

2. *Continuing trespass and remedy of the land owner*

It is trite law that it is a continuing tort of trespass for a person to remain in another's land without that other's authority or consent, so that barring defences properly raised and sustained which defeat the right of the owner of such land owner to complain of the continuing trespass, the land owner is always entitled to protection as appropriate: see *Adepoju v. Oke* (1999) 3 NWLR (pt. 594) 154 at 163-164. (p. 2072 F)

OGWUEGBU JSC

3. *The difference between a land registered under Registration of Title Law & unregistered land*

The conveyancing of unregistered land depends upon production by the vendor of a series of documents which recite previous dealings or transactions affecting the land showing the ability of the vendor to convey what he has agreed to convey. In that case title has to be proved afresh each time a disposition of land is made. On the other hand, the conveyancing of registered land is different. As soon as title to land is registered, its past history becomes irrelevant, from that time title is guaranteed by the State and a purchaser can rely on it and transfer of land

becomes the substitution of one person's name for another's in the registry. (p. 2074 D)

REPRESENTATION

- B Dr. Olu Onagoruwa with O. Onagoruwa Esq. for the appellant
M.B.A. Shomotun Esq. for the respondents

CASES REFERRED TO

- C Savannah bank (Nig) Ltd v. Ajilo (1989) 1 NWLR (pt.97) 305
Awojugbagbe Light Industries Ltd v. Chinukwe (1995) 4 NWLR (pt390) 379
International Textile Industries (Nig) Ltd. v. Aderemi (1999) 8 NWLR (pt614) 268.
D Madam I. Arase v. Peter U. Arase (1981) 3 SC 33
Gibbs v. Messer (1891) A.C/ 248 sy 254
Madubuonwu v. Nnalue (1992) 8 NWLR (pt 260) 440
Adepoju v. Oke (1999) 3 NWLR (pt. 594) 154 at 163-164
E Onabile v. Barclays Bank D.C.O. & Ors. (1967) 1 ALL NLR 313
Rihawi V Aromashodun (1952) 14 WACA 204
Balogun V Salami (1963) ALL NLR 128

F **STATUTES REFERRED TO**

Land Use Act 1978 ss. 22, 26
Registration of Titles Law cap 166 vol 7 Laws of Lagos State ss. 5, 9, 31, 65, 52, 54, 61

G **BOOK REFERRED TO**

Land Law and Registration 1976 edn. S. Rowton Simpson p. 16 para 4.1

LEAD JUDGMENT BY UWAIFO JSC

- H The appellant as plaintiff instituted two separate suits LD/513/80 and LD/512/80 against 1st and 2nd respondents respectively at the High Court, Lagos. The two suits were consolidated. The 3rd respondent was thereafter joined as co-defendant. In both the writ of sum-

mons and statement of claim as amended, the claim finally read:

"1 A DECLARATION that the plaintiff is the owner of the parcel of land known as Plots 89, 91 and 93, Dacosta Layout, Onike, Iwaya, Lagos State which parcel of land is covered by Title No.10246.

2. N5,000.00 special and general damages for trespass. B

3. A PERPETUAL INJUNCTION restraining the defendants whether by themselves or by their servants, agents or privies or otherwise howsoever from further trespassing on the plaintiff's land known as Plots 89, 91 and 93 Dacosta Layout, Onike, Iwaya, Lagos State and covered C by Title No.10246."

The plaintiff's claim to ownership of the said plots 89, 91 and 93 is based ultimately on Registration of Titles Law, 1935 (Cap.166) vol 7, Law of Lagos State of Nigeria, 1994. The Oloto Chieftaincy family originally owned the land involved, as part of their larger parcel of land. D By a deed of conveyance dated 24th February, 1964 registered as No.3 at page 3 volume 1222 of the Register of Deeds kept at the Lagos State Land Registry, Lawrence Gregorio Da Costa acquired a vast parcel of land from the said Oloto Chieftaincy family. This was admitted as exhibit E A. The said Da Costa laid the land into various plots. The land is known as L.G. Da Costa Layout, Onike, Yaba. Thereafter he sold eight of the plots to Oyenuyi Arolabu Oyesanya (pleaded erroneously by the plaintiff in para.4 of his statement of claim as Oyeniyi Afolabi Oyesanya) by a F deed of conveyance which the said Oyesanya registered under Title No. 10246: see exhibit B. The eight plots so registered are numbered 17,78,80,85,89,91, and 93. By a deed of transfer dated 15th March, 1978, the said Oyenuyi Arolabu Oyesanya transferred the entire eight G plots to Michael Alaba Onagoruwa (the plaintiff). The transfer was registered under the same Title No.10246: See exhibit C. The registration history of the land is noted in the Lagos Title No. MO10246 showing (A) Property Resister and (B) Proprietorship Register. This records among H other information a short description of the land as plots 17, 78, 80, 85, 87, 89, 91 and 93 on L.G. Da Costa Layout in the *Property Register* and the transfer from Oyenuyi Arolabu Oyesanya to Michael Alaba Onagoruwa in the *proprietorship Register*. A plan drawn on 20 April, 1972 showing

the layout of the said plots in the name of Mr. Oye A. Oyesanya is attached: See exhibit C1. There is also what is referred to as a "Portion of Intelligence Sheet" intended, I believe, to show the relative position of some of the plots registered under title No. Mo10246 and another title MO9228: see exhibit D. In respect of the said title No. MO9228, the present 3rd respondent had in suit No. LD/1272/72 at the Lagos High Court claimed ownership and sought rectification of the Register. But the claim was dismissed on 9 May, 1985 and no appeal was taken: see exhibit E. The appellant in the present case filed what he called composite plans (exhibits G and G1). The two plans show the delineation of land claimed to belong to the 3rd respondent as represented in two different but apparently conflicting plans and its relationship with the appellant's registered plots of land. It is observed that the said land is not shown to encroach on any of the appellant's plot of land. The said composite plans have not been demonstrated to be of any use in proving any alleged trespass if that was the purpose, as I believed it might have been.

The appellant in his statement of claim pleaded how he came to be the owner of the plots of land under Registered title. He led evidence and tendered the exhibits already referred, particularly exhibits A, B, C, C1 and D. He said that plot 89 is No.145 in the Intelligence Sheet (exhibit D) while plots 91 and 93 are Nos.146 and 147 respectively. He said further that the 1st and 2nd respondents broke into plots 89, 91 and 93. Specifically, he identified the 2nd respondent as occupying plot 89(i.e.No.145) while the 1st respondent is on Nos.146 and 147. The 3rd respondent pleaded that the 1st and 2nd respondents are his tenants and claimed not to know of any layout called Da Costa layout but that if there was such layout, his own land was not within that layout. In para.8, he pleaded: "That with reference to paragraph 8 of the statement of claim, the third defendant says that he has never at anytime either personally or through any person or agents trespassed on the plaintiff's land and will put the plaintiff to the strictest proof thereof." I must say here that the 3rd respondent led no evidence.

The 1st and 2nd respondents pleaded that they are tenants of the 3rd respondent and have erected buildings on their respective pieces of

land measuring about 40ft by 90ft. They also pleaded, as the 3rd respondent did that they have no knowledge of Da Costa layout and in any case they are not within such layout; and they repeated what the 3rd respondent pleaded in para.8 of his statement of defence. The 1st and 2nd respondents testified, saying they were 3rd respondent's tenants although B there was nothing given or said in evidence to show that the 3rd respondent owns land within the area in question.

The 2nd respondent testified that the appellant took some people to the land on which she erected her building to demolish it. The police eventually intervened. The 1st and 2nd respondents called a licensed C surveyor, Daniel Olaloye Ogunkekan, d.w.3, who tendered what he called a composite plan (exhibit L) in which he superimposed two survey plans, No. DL/C/661 showing land of 1st respondent and No. DO2/LA/27 showing the 2nd respondent's land, upon another survey plan showing land D claimed to belong to the 3rd respondent. When cross-examined, he said a composite plan was usually prepared to show the land claimed by a plaintiff and that claimed by a defendant to ascertain any encroachment. In this particular case the two parcels of land claimed by the 1st and 2nd E respondent are shown to lie within the land alleged to be for the 3rd respondent, and just as the so-called composite plans (exhibits G and G) produced by the appellant show, there is nothing to indicate any encroachment between the land alleged to be 3rd respondent's and the plots in F question belonging to the appellant.

On 16 February, 1990, the learned trial judge (Famakinwa, J.) who heard the case dismissed the claim. Before doing so, he made certain findings some of which were contrary to the evidence before him and some controversial. First, he said: G

"From the pleadings and evidence advanced in the case, I am not satisfied that the plaintiff has established his title in respect of plots 89, 91 and 93 in L.G. Dacosta Layout. It is indeed important in this case to state that the plaintiff did not produce the said L.G. Dacosta Layout. H Thus, once does not know where plots 89, 91, and 93 are today in the area. Thus, it is difficult to say that these plots is (sic) in Dacosta Layout."

It seems to me the learned trial judge is not familiar with the Registration of Title Law applicable in Lagos State and did not examine the documentary evidence tendered and admitted in these proceedings. Second, the learned trial judge said:

B ".....there is no credible evidence before me that the plaintiff is in possession of plots 89, 91 and 93 which is (sic) the same as plots 145, 146 and 147 to enable him to maintain an action in trespass.... I am unable to decree that the plaintiff is the owner of plots 89, 91 and 93 Da-Costa layout in Onike Iwaya, Lagos State."

C The appellant's appeal against that judgment to the Court of Appeal was dismissed on 26 November, 1996. The appellant has further appealed to this court and has raised the following three issues for the determination of the appeal:

D "1. Whether the identity of the plots of land in respect of which the plaintiff claimed declaration of title, perpetual injunction and damages for trespass is ascertainable.

E 2. Whether the lower court was right in law in declining to decree that the plaintiff is the owner of plots 89, 91 and 93 of Dacosta layout Onike, Iwaya, Lagos State.

3. Whether the lower court was right in law in holding that the defendants did not trespass on the plaintiff's land."

F I think it is convenient to resolve issues 1 and 2 together as both call for a resolution as to whether there is evidence as to who owns the said plots 89, 91 and 93 and as to their location and definition.

Issues 1 and 2

G The argument by the appellant's counsel here is that the two courts below did not take into account that they were dealing with land located in a Registration District under the Registration of Titles Law (Cap.166) Laws of Lagos state which guarantees title in a special way. As to the identity and location of the plots he submits that exhibits A, B, H C, and C1 demonstrate this sufficiently, and when this is combined with the title so guaranteed under the Registration of Titles Law, appellant succeeded in proving his entitlement to definite plots of land numbered 89, 91 and 93 in Dacosta layout.

The respondent's counsel contends that the issue of the Registration of Titles Law was never canvassed nor was it pleaded that the land claimed by the appellant was located within a Registration District and submits therefore that the appellant cannot raise those matters now. The further submission is that the Land Use Decree having come into effect in March, 1978, any purported subsequent registration of title should be done with the consent of the Governor for it to be valid. Finally, on this point, he says that the appellant failed to identify and/or locate by evidence or any record the land he is claiming. B

Let me briefly dispose of the respondent's counsel's argument on the Land Use Act and the reliance on the Registration of Titles Law by the appellant. **It is true that any transfer of title derived even under the Registration of Titles Law must receive the consent of the Governor from the day the Land Use Act, 1978 came into force in order to make the transfer or alienation valid. That is what ss.22 and 26 of the Land Use Act stipulate: see Savannah bank (Nig) Ltd v. Ajilo (1989) 1 NWLR (pt.97) 305; Awojugbagbe Light Industries Ltd v. Chinukwe (1995) 4 NWLR (pt390) 379; International Textile Industries (Nig) Ltd. v. Aderemi (1999) 8 NWLR (pt614) 268. But the transfer of plots 89, 91 and 93 in question in this case to the appellant by Oyenuyi Arolabu Oyesanya was concluded before the Land Use Act came into force on 29 March, 1978. Exhibit C which is the Transfer Instrument shows that it took place on 15th March, 1978 while exhibit C1 shows that the document was already in the Land Registry on 28th March, 1978. That disposes of the argument on the Land Use Act.** As to the other argument on the Registration of Titles Law and the location of the land, there is no doubt that right from the inception of the action, the appellant made it clear that he relied on Registered Title. It is pertinent to refer to a couple of averments in his statement of claim as follows: C D E F G

"1. The plaintiff is the registered title owner in fee simple of a large piece or parcel of land at Iwaya, Onike, Yaba District Lagos.

2. the plaintiff's land is covered by a Land Certificate No. MO10246 of the land Registry, Lagos.

5. *The said piece or parcel of land has been laid out into plots known as L.G. Da Costa Layout and the plaintiff is the registered owner of plots 17, 78, 80, 85, 87, 89, 91 and 93 in the said layout.*

6. *The plaintiff has disposed of plots 17, 78 and 80 to various people who have been validly registered without objections at the Land Registry, Lagos."* [italics mine]

The respondents joined issue with the appellant on the above and denied knowledge of L.G. Da Costa Layout. The appellant gave evidence in support of the averments. It may well be true that neither counsel positively addressed the trial court on the import of Registered Title. But exhibits B, C, and C1 were before him. They show unequivocally that they were documents of title registered by the Registrar of Titles and they were what the appellant relied on in support of his claim for declaration. The lower court also had the exhibits before it and was seised of the pleadings by the parties and the evidence of the appellant that he registered the plots in question in Da Costa Layout under Registered Title OM10246. That court, with the greatest respect, did not seem also to appreciate the effect of Title Registration. However, in fairness to the court, counsel did not at all draw its attention to the Registration of Titles Law. It seems Pats-Acholonu JCA who read the leading judgment equated the title in issue with the ordinary incident of title based upon a certificate of occupancy when he said: "*It should be clarified once more that merely possessing certificate of occupancy does not by itself confer legitimacy of indefeasible title.*" The lower court also thought (1) that the appellant's title was such that had to be proved under native or common law system when Pats-Acholonu JCA cited the observation of this court in *Madam I. Arase v. Peter U. Arase (1981) 3 SC 33*, a case based on Bini Native law and Custom, where at page 35 it was said: "it ought to be borne in mind always that at common law where questions of title to land arise in litigation the court is concerned with the relative strengths of the titles proved by the claimants. If party A can prove a better title than party B, then party A is entitled to succeed"; and (2) that the land in question was not ascertainable when Musdapher JCA said: "It is now trite (?) and well settled, that a person who seeks decla-

ration of title to land must be able to ascertain the land. There must be proof of the identity of the land, so that there is no doubt as to the land marks and the area for which the declaration is sought."

The Registration of Title Law of Lagos State came into force on 4th April, 1935. Section 5 provides for compulsory first registration of every conveyance of a fee simple estate etc in a registration district. Section 6 provides for cases in which registration is permitted although subsection (2) provides that as from 9th February, 1979 no registration shall be in fee simple under the Law. The Registrar of Titles shall, in investigating a title with a view to first registration, accept and act on legal evidence or evidence ordinarily required by conveyancers, and if satisfied register accordingly: see s.9. Unless otherwise stipulated, a purchaser on the sale of registered land shall not require any evidence of title but shall depend on the evidence derived from the register as well as from a statutory declaration as to what do not constitute encumbrances; see s.31. Section 65 provides for the survey of registered land, and in particular subsection (2) provides that:

"Where the description of the land is, in the opinion of the registrar, sufficiently definite to enable the land to be located by survey at any time, or such land has been located to the satisfaction of the registrar on a general map provided by the Director of Surveys, the registrar may in his discretion register the land without a survey, but may at any time require the land to be surveyed, or himself cause it to be surveyed at the expense of the registered owner, when, in his opinion, a survey has become necessary to avoid confusion with other registered land sought to be registered."

The advantage of registered title is that the purchaser can discover from the mere inspection of the register whether the vendor has power to sell the land and what the more important incumbrances are except in the case of what may be classified as overriding interest, as contained in s.52 of the Registration of Titles law, which bind the proprietor of registered land even though he has no knowledge of them and no reference is made to them in the register. Otherwise, a registered owner of land is not affected by notice of any unregistered estate, interest or

claim affecting the estate of any previous registered owner, nor is he concerned to inquire whether the terms of any caution or restriction existing before he was registered as owner of such land have been complied with: see s.54. Short of rectification of the register carried out in pursuance of s.61, a registered owner's title is indefeasible. It has been said that a register of title is an authoritative record, kept in a public office, of the rights to clearly defined units of land as vested for the time being in some particular person or body and of the limitations if any, to which these rights are subject. With certain exceptions known as 'overriding interests', all the material particulars affecting the title to the land are fully revealed merely by a perusal of the register which is maintained and warranted by the State. The register is at all times the final authority and the State accepts responsibility for the validity of transactions, which are effected by making an entry in the register: see *Land Law and Registration, 1976 edn., by S. Rowton Simpson, page 16, para. 4.1*. As observed by the Privy Council in *Gibbs v. Messer (1891) A.C/ 248 sy 254*, per Lord Watson delivering the judgment of the Board in regard to a similar law as to registration of title:

"The object is to save persons dealing with registered proprietors from the trouble and expense of going behind the register, in order to investigate the history of their author's [i.e. vendor's] title, and to satisfy themselves of its validity. That end is accomplished by providing that every one who purchases, in bona fide and for value, from a registered proprietor, and enters his deed of transfer or mortgage on the register, shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author's title."

In the present case, the appellant did not need any other evidence than exhibits A, B, C, and C1 to establish his entitlement to the declaration he seeks as the first relief in this action. All he asks for is a declaration that he is the owner of the parcel of land known as plots 89, 91 and 93 DaCosta layout, Onike, Iwaya, Lagos State, covered by title No. MO 10246. Exhibit A and B show the root of title while exhibits C and C1 show the registration of title derived from that root. The said plots 89, 91 and 93 are delineated

in survey plan No. CO87/72 drawn by a licensed surveyor, C. Olu Dawodu, wherein the dimension and area of each of the plots and the survey beacons demarcating each are clearly indicated as follows:

Plot	Area	Dimension	Beacons	
89	557.43sq yds	99.9' x 47.1' x 100' x 52.6'	DU 1430, DU 1431, XC 1053, XC 1166	B
91	636.88sq yds	100' x 62' x 100.2'x52.6'	DU 1431, DU 1432, XC 1054, XC 1053	
93	501.42sq yds	100.2' x59' x 100' x 49.3'	DU 1432, DU 1433, XC 1055, XC 1054	C

I have given these details to illustrate that the facts as to the identity and location of the parcel of land were available but the two courts below did not make use of them. The lower court was therefore in error to hold, as the trial court did, that the identity of the plots in question was not established. The area of each of those plots can easily be depicted in an enlarged form from the said survey plan No. CO 87/72 by any surveyor in a survey plan. Each plot is not only ascertainable, it is certain in identity. I answer issue 1 in the affirmative and issue 2 in the negative.

Issue 3

The issue here is whether there is evidence that the respondents trespassed on the appellant's land. The learned trial judge held that the appellant was unable to show that the respondents have trespassed on plots 89, 91 and 93; and further that there was no credible evidence that the appellant was in possession of the said plots to enable him to maintain an action in trespass. He observed:

"It is important in the case to state that, plaintiff did not testify that the defendants did not only trespass on plots 89, 91 and 93 but they are also occupying these plots now. I would not claim to know the evidential value of Exhibit D the intelligence sheet obtained from the Land Registry. However, during the course of my judgment this morning, I have studied this document carefully and I found that there appears to be plots 145, 146 and 147. It is clear in the case that the plaintiff who did

not call any expert opinion like a licensed Surveyor did not submit Exhibit D to such expert. If he did and his story is true, of course, the activities of the defendants on these plots would have been shown on plan..... The question therefore is whether the defendants have their buildings inside 3rd defendant's land or in DaCosta Layout? Apart from the fact that the plaintiff gave evidence to the effect that the plots occupied are plots 145, 146 147 which are unrelated plots to this action, plaintiff did not call an expert opinion to state where the defendants had erected their structures."

This is the crux of the reliefs sought for damages and injunction. Apart from the fact that the evidence shows that plots 89, 91 and 93 indicated in exhibits B, C and C1 are the same as Nos. 145, 146 and 147 shown in exhibit D (the intelligence sheet) in respect of which the learned trial judge was in error, his observation is quite appropriate. The lower court also held that the appellant did not demonstrate the connection between the land alleged trespassed on and the said plots claimed by him in Da Costa Layout.

I do not think learned counsel for the appellant has any answer to whether he was able to prove that the respondents trespassed into any part of plots 89, 91 and 93. He continued in this court to present his case upon the faulty assumption with which he did so in the two courts below that the respondents have been shown to be trespassers on his plots. It is inexplicable the way the case in this regard was casually presented at the trial with the result that the said two reliefs sought for damages and injunction were not pursued with any purpose. **I accept the argument of appellant's counsel that once the appellant is shown to be the owner of those plots of land, contrary to the erroneous view of the lower court, he is in exclusive possession or has a right to such possession and that anyone who is on the land without his permission is a trespasser ab initio. However, the question that there has been trespass on the land is a conclusion that can only be reached upon the evidence available. That was how decision was reached in the case of Madubonwu v. Nnalue (1992) 8 NWLR (pt 260) 440 cited by him, and similar cases. No argument was proffered to identify**

the evidence in support of the trespass committed by the respondents. The truth is that there is no such evidence in proof.

The evidence which the appellant was half-heartedly led to give on the question of trespass can be pieced together from his evidence-in-chief, when he said-

"In July, 1978, I noticed some persons carrying laterite on the plots of land belonging to me. I challenged the person in charge of the workers Mr. Rasaki Aliu.... Nothing happened until about 27/3/80 when I found people carrying blocks and sand to plots 89, 91 and 93. I challenged the workers.....The people I met on the land claim (sic) to be tenants of one Bola Ajibola....I thereafter applied to the land registry for the Intelligence Sheet of the area in question. The defendants are trespassing on the plaintiff's land. My own land on the Intelligence Sheet are No. 145, which is plot 89 Dacosta Layout. The others are No. 146 and 147. Oluwo is occupying No. 145 while Akinremi is occupying No. 146 and 147"

Later he was cross-examined, as follows-

"Q: You tendered exhibits G and G1 in your evidence-in-chief. E

A: I tendered exhibits G and G1 as composite plans.

Q: You call them composite plans, what is a composite plan in your own words?

A: A composite plan is a plan which shows relative position of lands in dispute by a professional surveyor. It shows Ajibola's land which has been found not to exist and my own land which has been registered. The composite plan shows that Ajibola's land does not come near my land - which consists of five plots which are in dispute.

Q: Show the court where the defendants encroached on your land.

A: The defendants encroach (sic) on my land on plot 89.... The defendants are tenants to Ajibola who have (sic) no land in the area."

The two respondents testified as to how one Bola Ajibola gave them land as his tenants to build on. They were cross-examined at length and purposelessly upon irrelevant matters and in a most ineffective manner. The closest question put to the 1st respondent and the answer thereto

were recorded thus:

"Q: Before you went on the land, the plaintiff told you not to build there.

A: I never saw him until I completed the house."

B The so-called composite plans admitted as exhibits G and G1
 simply indicate the land allegedly laid claim to by the said Bola Ajibola in
 relation to the plots of land of the appellant. They were not shown to
 have encroached one upon the other. The purpose of producing such
 'composite plans' by the appellant in view of what was in contest is
 C anybody's amazing guess, the appellant himself having said that "the com-
 posite plan shows that Ajibola's land does not come near my land". So,
apart from the weak ipse dixit of the appellant that the 1st respon-
dent was occupying Nos. 146 and 147 (which are indeed plots 91 and
 D **93) and that the 2nd respondent was occupying No. 145 (i.e.plot 89),**
there is nothing to actually demonstrate this by a proper survey
plan showing encroachment particularly as the respondents through-
out denied being on any part of the appellant's land. There is no
 E **evidence of any threat by any of them to invade the appellant's**
right to the said plots 89, 91 and 93 in L.G. DaCosta layout, Onike,
Iwaya, Lagos State. The appellant has been unable to prove any act
of the respondents upon which an order of injunction and award of
 F **damages against them can be based. Had he succeeded in doing so,**
the respondents would have been adjudged trespassers since the
appellant whose title to the land is not in doubt has accordingly
established his right to possession by virtue of that title. It is trite
 law that it is a continuing tort of trespass for a person to remain in another's
 G land without that other's authority or consent, so that barring defences
 properly raised and sustained which defeat the right of the owner of such
 land owner to complain of the continuing trespass, the land owner is
 always entitled to protection as appropriate: see *Adepoju v. Oke (1999) 3*
 H *NWLR (pt. 594) 154 at 163-164.*

This appeal partially succeeds and is allowed by me. I set aside
 the orders of the two courts below which entirely dismissed the appellant's
 claim. In their place I give judgment for the appellant as plaintiff allowing

his said claim to the extent by the order which I make as follows: A declaration that the plaintiff is the owner of the parcel of land known as Plots 89, 91 and 93, DaCosta layout, Onike, Iwaya, Lagos State, which parcel of land is covered by Title No. MO.10246, and that by virtue of the Land Use Act, 1979 and section 6(3) of the Registration of Titles Law (Cap. 166) Vol. 7, Laws of Lagos State, he is entitled to a Certificate of Occupancy in respect of the said parcel of land. The reliefs claiming for damages and injunction are dismissed. I award the sum of N10,000.00 as costs to the appellant against the respondents.

C

OGUNDARE JSC

I have read in advance the judgment of my learned brother Uwaifo, JSC just delivered. For the reasons given by him with which I am in full agreement and which I adopt as mine, I agree that this appeal succeeds as regards the claim for title and I abide by the order made by Uwaifo JSC in regard thereto. The appeal as regards the claims for damages for trespass and injunction fails, these claims stand dismissed.

I abide by the order for costs as contained in the judgment of my learned brother, Uwaifo, JSC.

OGWUEGBU JSC

I have read before now the judgment just delivered by my learned brother Uwaifo, JSC. I entirely agree with his reasoning and conclusions that the appeal should be allowed to the extent of granting the plaintiff the relief sought in paragraph 23(1) of his amended statement of claim.

I however wish to comment in amplification of the first issue for determination: *"Whether the identity of land in respect of which the plaintiff claimed declaration of ownership, perpetual injunction and damages for trespass is ascertainable."*

On this issue the court below held as follows:

"The latent weakness manifest in the Plaintiff's (sic) are with great respect legion. He was unable to satisfy the court that his land, which even the composite plan shows is very far away from the Respondent could be trespassed into by the Respondents. He was unable to

show the proper linkage between his plots allegedly trespassed upon with the plots marked by Da-Costa. There is no clarity in the evidence proffered. One would have expected that he would call his own surveyor or even the relation of those from whom he bought. It should be clarified once more that merely possessing certificate of occupancy does not by itself confer legitimacy of indefeasible title. The evidence of the surveyor who testified for the Respondent dealt a telling blow to his case."

The title which the plaintiff claims in respect of plots 89, 91 and 93 is derived from the system of registration of title first introduced into Nigeria in 1935 and the law applicable to the case is the Registration of Titles Law Cap. 166, Laws of Lagos State of Nigeria, 1994. The courts below did not realise that the claim before them is in respect of land located in a Registration District under the aforementioned Cap. 166 Laws of Lagos State. The conveyancing of unregistered land depends upon production by the vendor of a series of documents which recite previous dealings or transactions affecting the land showing the ability of the vendor to convey what he has agreed to convey. In that case title has to be proved afresh each time a disposition of land is made. On the other hand, the conveyancing of registered land is different. As soon as title to land is registered, its past history becomes irrelevant, from that time title is guaranteed by the State and a purchaser can rely on it and transfer of land become the substitution of one person's name for another's in the registry.

The property register describes and identifies the land and the interest in the land which is the subject-matter of the title. Registration of titles is however distinct from registration of instrument, the former is simpler, cheaper, speedier and more reliable.

The inability of the courts below to distinguish between the two systems of land registration led to their conclusion that the identity of the land in dispute was not proved by the plaintiff when plaintiff's land in the area is covered by Title No. MO 10246 which is exclusively for the plaintiff. The survey plan of the land comprised in Title No. MO10246 is available for inspection at the Land Registry and the mere mention of title No. MO10246 is sufficient description of the plaintiff. What the plaintiff

has is not a mere certificate of occupancy as stated by the court below; It is a certificate of title under the Registration of Titles Law of Lagos State, 1994 and the estate conferred on him under the said Law is as provided in sections 48 and 54 of the Law which read:

"48.(1) *Save as in this Law mentioned-*

(a) *registration of any person as owner of freehold land shall vest in that person an estate in fee simple in that land, together with all buildings, erections, fixture, commons, hedges, ditches, fences, ways, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of registration demised, occupied or enjoyed with or reputed or known as part or parcel of or appurtenant with the land or any part thereof, and free from all estates whatsoever, including those of the state Provided....."*

"54. *A registered owner of any land or charge, being a purchaser for value, is not affected by notice, whether express or implied, of any unregistered estate, interest or claim affecting the estate of any previous registered owner, or concerned to inquire whether the terms of any caution or restriction, so far as they relate to the time prior to the registration of himself as owner of such land or charge, have been complied with."*

The plaintiff proved his entitlement to the declaration sought by the production of the following documents which were admitted in evidence:

(1) A deed of conveyance dated 24th February, 1964 and registered as No. 3 at page 3 in Volume 1222 of the Register of Deeds kept at Lagos State Land Registry between Oloto Chieftaincy Family which originally owned the land and Lawrence Gregorio Da Costa (exhibit 'A').

(2) After laying the land into plots known as Da Costa Lay Out, Onike, Iwaya, Lawrence Gregorio Da Costa sold eight of the plots to Oyenuyi Arolabu Oyesanya by a deed of conveyance which was registered under the Registration of Title Law as No. 10246 and the eight plots are numbered 17, 78, 80, 85, 87, 89, 91 and 93 (exhibit "B").

(3) A deed of transfer dated 15th March, 1978 by which Oyenuyi

Arolabu Oyesanya transferred the eight plots of land to Micheal Alaba Onagoruwa - the plaintiff. The transaction was registered under title No. 10246 (exhibit "C" "C1").

(4) Exhibit "D" - Intelligence Sheet which contains a description of the land in the registration district, the registered owners of each plot and the title number pertaining to each plot.

Thus a purchaser of registered land is not affected with notice either actual or constructive, of any unregistered estate, interest or claim which affects the estate of his vendor. The estate of a first registered owner for value is free from unregistered estate, interest or claim affecting the land. It is not limited by any interest adverse to or in derogation of his title subsisting or capable of arising at the time of first registration. The plaintiff having tendered the documents enumerated above ought to have been declared owner of the parcel of land and if the courts below had appreciated the basic idea behind registration of title under cap. 166, Laws of Lagos State, 1994 and its incidents, their decisions would have been different. There is no way the defendants can successfully challenge the title of the plaintiff short of the rectification of the register in accordance with sections 60 and 61 of the law. Since that was not the case, the title of the plaintiff in respect of plots 89, 91 and 93 remains indefeasible.

There is merit in issues (a) and (b) and the appeal partially succeeds as to the ownership of plots 89, 91 and 93 of Da-Costa Layout, Onike, Iwaya, Yaba. The appeal on trespass and damages fail. I subscribe to the consequential orders made in the judgment of Uwaifo JSC including the order for costs.

ONU JSC

I am in entire agreement with the judgment of my learned brother Uwaifo, JSC a preview of which I had before now, that this appeal be and is hereby allowed to the extent and for the reasons stated therein.

In commenting generally on the three issues my learned brother has fully considered, I wish to expatiate on Issue 1 that in the appeal

herein, the Appellant did not need any other evidence apart from exhibits A,B,C and C1. to establish his entitlement to the declaration he seeks regarding the first relief in the action. All he asks for is a declaration that he is the owner of the parcel of land known as plots 89, 91 and 93 in Da Costa Layout, Onike, Iwaya, Lagos State and covered by title Deed No. B MO.10246. While Exhibits A & B show the root of Appellant's title derived from the land, Exhibits C and C.1 demonstrate the registration of title derived therefrom. The said plots 89, 91 and 93 as demonstrated by the appellant both in his pleading and evidence, are delineated in Survey C Plan No. CO87172 drawn by a licensed Surveyor, C. Olu Dawodu, in which the dimensions and areas of each of the plots as well as survey beacons demarcating each, are clearly depicted on the records.

To demonstrate how the appellant established his case on the balance of the documentary evidence he adduced, may be gleaned from: D

(1) Exhibit 'A' which is a Deed of Conveyance from the Oloto Chieftaincy Family to Lawrence Da Costa, Appellant's predecessor-in-title.

(2) Exhibit 'B' which is a Deed of Conveyance from Lawrence Da Costa to Oyeniyi Oyesanya. E

(3) Exhibit 'C.1' which is a Deed of Transfer from the said Oyesanya to the Appellant.

(4) Exhibit 'D' which is the Intelligence Sheet showing the locations and ownership of lands at Iwaya as kept in the Lagos State Land Registry. F

(5) Exhibits G and G1 which are composite plans to establish his title to these parcels of land in relation to his predecessor-in-title. G

(6) From Exhibit 'D' supported by the Appellant's unchallenged evidence, he established that plots 89, 91 and 93 at Da Costa Layout which are now disputed in this case, they are otherwise known and called Parcels 145, 146 and 147 of the land at Iwaya.

It is noteworthy that the 1st and 2nd respondents did not claim the ownership of the three parcels of land to be theirs. H

The question which the two courts below ought to have asked themselves in the face of the overwhelming pieces of evidence in favour

of the Appellant was, were these plots ascertainable? In view of Sections 48 and 54 Registration of Titles Law, Cap. 21 of Lagos State which say that once one has registered a plot, the title to it is indefeasible (see also the case of Onabile v. Barclays Bank D.C.O. & Ors. (1967) 1 ALL NLR B 313) these plots became ascertainable. Therefore, for the two courts below to ignore them by holding that their identity was not established, is palpably erroneous.

The trial court's decision which the lower court upheld went thus:

C *"From the reasoning given in this case, I am unable to decree that the plaintiff is the owner of plots 89, 91 and 93 Da Costa Layout Onike Iwaya, Lagos State. Moreover, there is not the scratch of evidence before me that the Plaintiff is in possession of plots 89,91 and 93 in L.G. D Da Costa Layout. On this (sic) premises, the entire action against the Defendants in the consolidated suits fails in its entirety and as Suits filed against the 2 Defendants, are accordingly dismissed."*

If, as I do find, the conclusions of the two courts below are wrong, then E the indefeasible title of the Appellant to plots 89, 91 and 93 is unquestionable, thus confirming his title under Sections 48 and 54 of Registration of Titles Law of Lagos State which has been in operation on matters relating to land in the area now known as Lagos State since 1935. There F would have been no need for the two courts below to have gone outside this 1935 Act which is a good piece of legislation to rake in the provisions of the Land Use Decree (now Act). See also Exhibit D - the intelligence Sheet - which rather than derogate from, strengthened the Appellant's case.

G Since in relation to issue C the Appellant did not lead any evidence as to trespass committed by the Respondents to be entitled to the injunction he sought, my answer thereto is rendered in the affirmative.

The appeal on this issue therefore fails.

H It is for these and other reasons discussed in Issues 2 and 3 as contained in the leading judgment of my learned brother Uwaifo, JSC with which I am in entire agreement, that I allow this appeal and subscribe to the costs awarded therein.

KALGO JSC

I have had the privilege of reading in advance the judgment just delivered by my learned brother Uwaifo JSC. I agree that there is merit in the appeal in respect of the ownership and identity of the land in dispute and I will accordingly allow it. The facts of this case were clearly set out by Uwaifo JSC and I do not intend to repeat them here in detail. B

The issues for determination in this appeal concerned the ownership and identity of and trespass upon the land in dispute. The plaintiff/appellant traced his radical title to the land to the Oloto family the original owners thereof. It is not in dispute that the appellant bought the plots in dispute from one Mr. Oyesanya on 15th March 1978. It is also not in dispute that the said land was originally sold by the Oloto Chieftaincy family to one Lawrence G. Da Costa on the 24th of February 1964 (Vide the conveyance Exhibit A). Mr. Da Costa in turn sold the plots in dispute to Mr. Oyesanya and conveyed same to him on 9th February 1973. (Vide the conveyance Exhibit B). In addition Mr. Oyesanya registered his title in the Lagos State Lands Registry and on sale to the appellant, he delivered to the latter the Certificate of registration and the document of transfer of the land (Vide Exhibit C). C D E

It is very clear from the pleadings and supported by the evidence of the appellant that after obtaining Exhibit C from Da Costa, he again registered it with Lagos State Land Registry under the Lagos State Registration of Title Law Cap. 121 Laws of Lagos State 1973, and obtained the registration Certificate (exhibit C1). He also obtained the Intelligence Sheet (Exhibit D) from the Land Registry which revealed that plots Nos. 89, 91 and 93 of Da Costa Layout were the same as parcel No. 145, 146 and 147 described in the plans Exhibits G and G1. The appellant heavily relied upon the registration of his title to the land in dispute under the said law and also submitted that the land in dispute being within the registration district under the said law, once it is registered, the registration becomes definite and final authority for all times as to the validity of the transactions affecting the land in dispute. F G H

I entirely agree with the submissions of the learned appellant's

counsel on this matter and find support on this in the provisions of s.48 (1) (a) of the Registration of Titles Law which says:-

"(1) Save as in this Law mentioned:-

(a) registration of any person as owner of freehold land shall vest in that person an estate in fee simple in that land, together with all buildings, erections, fixture, commons, hedges, ditches, fences, ways, liberties, privileges, easements, rights and advantage whatsoever, appertaining or reputed to appertain to the land, or any part thereof or at the time of registration demised, occupied or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land or any part thereof and free from all estates whatsoever, including those of the state."

Such registration can only be interfered with on proper application for the rectification of the register pursuant to sections 60 and 61 of the said Law. see ***Rihawi V Aromashodun*** (1952) 14 WACA 204 AT 207 AND 208; ***Balogun V Salami*** (1963) ALL NLR 128 at 129 - 130. There is no such application in this case. Therefore the registration of the land in dispute per Exhibit C1 by the appellant was valid and fully confirmed his title to the land. He would therefore be entitled to the Certificate of Occupancy in respect thereof.

On the issue of trespass, the survey and composite plans Exhibit G and G1 - have shown that the land occupied by the defendants/respondents were different and some distance away from the land claimed by the appellant. This was also confirmed by the evidence at the trial. There is no proof of trespass on the appellant's land as alleged, and consequently no damages or injunction can be granted against the respondents in the circumstances.

For what I have stated above and more detailed reasons in the leading judgment, I also allow the appeal in part: set aside the decisions of the trial court and the Court of Appeal in respect of the ownership of the land in dispute and dismiss the appeal in respect of trespass to the land. I abide by the order as to costs made in the leading judgment.