

**SUPREME COURT OF NIGERIA**  
FRIDAY 12TH JULY, 2002. SC. 44/1998  
**CORAM:- A. B. WALI, I. L. KUTIGI, S. U. ONU,**  
**A. I. KATSINA-ALU, A. O. EJIWUNMI, JJSC**

ALHAJI JAMIU OLOKOTINTIN ..... APPELLANT  
AND  
1. SAADU SARUMI  
2. ALHAJI HANAFI ABDULKARIM..... RESPONDENTS  
3. ALHAJI BABATUNDE KOLOBO

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LAND LAW - Title - Proof - Plaintiff seeking declaration of title to land - Must by cogent and credible evidence - Show that he is entitled to same - And not relying on the weakness of defendants' case (H1)

LAND LAW - Title - Root of - Failure to prove - Effect - Since plaintiff failed to establish how the land devolved on him - His claims ought to fail (H2)

***FACTS***

Plaintiff/appellant and defendants/respondents were involved in dispute over the ownership of a piece of land situate at Ilorin. Consequent upon this, appellant filed this action at the High Court of Kwara State, Ilorin, claiming declaration to title, perpetual injunction and general damages for trespass committed by respondents on the disputed land. In his pleadings, appellant simply averred that the land belonged to his grand father and that he (appellant) has been farming on the land.

On their part, respondents gave traditional evidence on how the land devolved on them. They also raised the issue that the land had been adjudged to belong to respondents by an Ilorin High Court in suit no: KWS/8A/84. Hence, appellant is estopped from re-litigating the matter. In a reserved judgment, the learned trial judge dismissed appellant's claims in their entirety on the grounds of lack of insufficient and credible evidence and *res judicata*. Dissatisfied, appellant appealed to the Court of Appeal, Ilorin. The court unanimously dismissed the appeal on the same ground of lack of credible

evidence to prove title. The issue of *res judicata* was however decided in appellant's favour. Still dissatisfied, appellant appealed to Supreme Court.

### **ISSUE FOR DETERMINATION**

Whether or not the Court of Appeal was right in dismissing Plaintiff's claims on the ground that he failed for want of evidence to establish his case.

**HELD** (Unanimously dismissing the appeal per **KUTIGI JSC**)

*LAND LAW - Title - Proof*

**1. It is trite that a Plaintiff seeking for a declaration of title to land must by cogent and credible evidence show that he is entitled to the land and not relying on the weakness of the Defendant's case.**

**Now what evidence did the Plaintiff lead in this case? On page 66 of the record, he testified (PW1) amongst others as follows -**

***"My grand father Alhaji Abdullahi Olokotintin had the land. His son was called Iliyasu Olokotintin and he is my father where I inherited the land."***

**This was all the Plaintiff had to say about how he came to own the land in dispute. And there is nothing useful in this direction in the testimonies of his other two witnesses, PW2 & PW3. The Plaintiff never narrated how his grand father came to own the land, and neither did he say how the land devolved upon him personally. (p. 2421 H)**

*LAND LAW - Title - Root of - Failure to prove - Effect*

**2. It is evident that the Plaintiff's evidence and that of his witnesses is to say the least very weak and had completely failed to meet any of the five (5) ways for proving title to land as laid down in the case of *IDUNDUN v. OKUMAGBA* (1976) 9 - 10 SC 227. The Plaintiff had the burden of setting out clearly by who and how the land was founded and the names of persons who had exercised acts of ownership on the land before it**

***devolved upon him. In the instant case, the Plaintiff had failed to satisfy any of these requirements with fatal consequences. His claims ought to fail as they did.*** (p. 2422 C)

### **REPRESENTATION**

Alhaji Aliyu Salman, SAN with him John Braimoh for the Appellant  
Joseph A. Nwobike for the Respondent

### **CASES REFERRED TO**

Okafor v. Idigo (1984) 6 SC 1  
Idundun v. Okumagba (1976) 9 - 10 SC 227  
Kalio v. Woluchem (1985) 1 NWLR (Pt. 4) 610  
Alade v. Awo (1975) 4 SC 215  
Odojin v. Ayoola (1984) 11 SC 72

### **LEAD JUDGMENT BY KUTIGI JSC**

In the High Court of Kwara State holden at Ilorin the Plaintiff's claims against the Defendants read thus -

*“(a) A declaration that the Plaintiff is the occupier/holder of the said piece of land lying and situate at Ile-Oloko tintin, Ilorin.*

*(b) Perpetual injunction restraining the Defendants, their servants and agents from any act of trespass on the said land, and*

*(c) One thousand Naira (N1,000.00) general damages for the said trespass.”*

Pleadings were ordered, filed and exchanged. Thereafter the case proceeded to trial. The Plaintiff gave evidence and called two other witnesses to prove his claims. Only the first Defendant testified for the Defendants. The facts of the case are quite simple and straight forward. The Plaintiff said the land in dispute measuring about 200 feet by 600 feet was the farm land of his grand father one Abdullahi Oloko tintin. That the land devolved on him through his line of ancestors namely Abdullahi Oloko tintin and Iliyasu Oloko tintin the Plaintiff's father. He said he has been farming on the disputed land.

The Defendants on the other hand said the land in dispute was given to their grand father Ologbondoko by Abdul Salami a one time Emir of Ilorin as a reward of his gallantry and valour during the Ikoko war. That after the death of Ologbondoko, the land devolved on his children including Ahmadu, the first Defendant's father. There-

after the land devolved on the first Defendant herein who is the present head of the family. That his family have since been exercising acts of ownership on the land. The Defendants also contended that the land in dispute was adjudged to belong to their family by the Ilorin High Court in suit No. KWS/8A/84 on 19th October, 1988 and that  
B the plaintiff is estopped from re-litigating the matter.

At the close of the case for the parties the Court in the presence of the respective parties visited the locus in quo. The parties thereafter submitted written addresses to the Court. In a reserved  
C judgment the learned trial judge after a careful evaluation of the evidence led before him dismissed the Plaintiff's claims in their entirety.

The record clearly shows that the Plaintiff's claims were dismissed on two main grounds as follows -

(1) Want of sufficient and credible evidence. The learned trial  
D judge in his judgment on page 116 of the record said -

*"In this case I find as a fact when weighing evidence of the Plaintiff with that of defence I find the evidence of the Plaintiff is so scanty and very unconvincing as to prove ownership of the land in dispute as to establish the case of trespass ....."*

E (2) Res Judicata

On page 119 of the record the learned trial judge held thus -

*"I have carefully perused the descriptions of the disputed land given by both parties and have been to the locus in quo and found that the land in dispute is the same with the one as determined in  
F Exhibit D1. The description of PW3 and that of Defendant are almost the same and I have no doubt it is the same land as rightly contended by defence counsel... Having so hold as above, I am of the strong view that according to the evidence before me I hold that  
G the land in dispute between the parties herein has been adjudged upon by the High Court Ilorin, in its appellate jurisdiction in its judgment delivered on 19/10/88 and that the doctrine of res judicata applies in this case."*

Dissatisfied with the judgment of the trial High Court, the Plaintiff  
H appealed to the Court of Appeal, holding at Kaduna. In a reserved judgment the Court of Appeal unanimously dismissed the Plaintiff's appeal. This time however the appeal was dismissed only on one of the two grounds above. That is on the ground of lack of credible and sufficient evidence to prove the case as held by the trial Court above.

The Court of Appeal had this to say in its lead judgment -

*"If one takes a hard look at the evidence of the appellant (meaning Plaintiff) and his witnesses, which I have done, it will be clear that he failed woefully to establish his case before the trial Court... He also failed to establish with certainty the land he was claiming. He did not tender any survey plan of the disputed land. I have earlier in this judgment given his description of the land which is totally inadequate... I am therefore of the firm view that the trial judge was right in holding that the appellant (meaning Plaintiff) failed to prove his claim before him and he rightly dismissed it."* (Words in bracket are mine) B

The Court of Appeal however, resolved the issue of res judicata in favour of the Plaintiff when it said:- C

*"What is seriously disputed is that the disputed land is not the same. I have examined Exhibit D1 very carefully and I observe that there is nothing in it to show the description of the land in dispute in that claim to enable the trial court to reach the conclusion that it was the same land being litigated before it. The trial Court was therefore wrong to apply the doctrine of res judicata to the case. This issue is resolved in favour of the appellant (meaning Plaintiff)."* D

That was that. Still dissatisfied with the judgment of the Court of Appeal, the Plaintiff has further appealed to this Court. In accordance with Rules of Court, the parties filed and exchanged briefs of argument which were adopted at the oral hearing of the appeal. The Plaintiff in his brief of argument has identified five issues as arising for determination in the appeal. Having carefully read the Grounds of Appeal and the issues raised in the brief as well as having read the judgments of both the trial High Court and that of the Court of Appeal referred to above, it seems to me quite clear that the single and most vital issue to decide in this appeal is - E

Whether or not the Court of Appeal was right in dismissing Plaintiff's claims on the ground that he failed for want of evidence to establish his case. F

Once this issue is resolved, all the other issues raised by the Plaintiff will become irrelevant and unworthy of any consideration thereafter as will soon be seen. G

***It is trite that a Plaintiff seeking for a declaration of title to land must by cogent and credible evidence show that he is entitled to the land and not relying on the weakness of the***

**Defendant's case.** See for example KODILINYE v. ODU 2 WACA 336; OKAFOR v. IDIGO (1984) 6 SC 1).

**Now what evidence did plaintiff lead in this case? On p. 66 of the record, he testified (PW1) amongst others as follows -**

B ***"My grand father Alhaji Abdullahi Olokotintin had the land. His son was called Iliyasu Olokotintin and he is my father where I inherited the land."***

C ***This was all the Plaintiff had to say about how he came to own the land in dispute. And there is nothing useful in this direction in the testimonies of his other two witnesses, PW2 & PW3. The Plaintiff never narrated how his grand father came to own the land, and neither did he say how the land devolved upon him personally. It is evident that the Plaintiff's evidence***  
D ***and that of his witnesses is to say the least very weak and had completely failed to meet any of the five (5) ways for proving title to land as laid down in the case of IDUNDUN v. OKUMAGBA (1976) 9 - 10 SC 227. The Plaintiff had the burden of setting out clearly by who and how the land was founded***  
E ***and the names of persons who had exercised acts of ownership on the land before it devolved upon him*** (see for example KALIO v. WOLUCHEM (1985) 1 NWLR (Pt.4) 610; ALADE v. AWO (1975) 4 SC 215). ***In the instant case, the Plaintiff had failed to***  
F ***satisfy any of these requirements with fatal consequences. His claims ought to fail as they did*** (see ODOFIN v. AYOOLA (1984) 11 SC 72). I must say that the record on page 77 shows that it was the 1st Defendant who vividly described how he came to inherit the land in dispute. But since there was no counter-claim by the Defendants they have no burden to discharge. I will therefore say no more on this point. The learned trial judge was therefore perfectly right when he said in his judgment that -

H ***"The Plaintiff's evidence is so scanty and very unconvincing as to prove ownership of the land in dispute or as to establish the case of trespass and claim for damages. The Court of Appeal was in my view, equally right when it upheld the finding of the trial Court above. I will say nothing on the issue of res judicata because the Defendants who raised it at the trial have not appealed against it."***

This appeal therefore fails. It is unmeritorious. It is accordingly

dismissed with N10,000.00 costs in favour of the Defendants.

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### **WALI JSC**

I have had the advantage of reading the lead judgment of my learned brother Kutigi JSC, and I agree with him that the appeal lacks merit and ought to be dismissed, and for the same reasons ably stated by my brother, I also hereby dismiss it with the same order as to costs made in the lead judgment.

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### **ONU JSC**

I have been privileged to read in draft the judgment of my learned brother Kutigi JSC, just delivered. I agree with him that the appeal lacks substance and it is accordingly dismissed by me.

In adding a few comments of mine, I wish to observe that in dismissing the appellant's case the decisions of the trial Court which the Court of Appeal (hereinafter referred to as the Court below) upheld on the two props of:

(i) Want of sufficient and credible evidence and  
(ii) Res Judicata backed by a visit to the locus in quo by the trial court the lone issue that was identified for determination in the appeal to this Court is:

Whether or not the Court of Appeal was right in dismissing Plaintiff's claims on the ground that it failed for want of evidence to establish his case.

At the conclusion of the evidence led on how the Appellant came by the land in dispute, the learned trial Judge (Owolabi, J.) held, rightly in my view, in his judgment, as follows:

*"The Plaintiff's evidence is so scanty and very unconvincing as to prove ownership of the land in dispute or as to establish the case of trespass and claim for damages."*

Confirming the trial Court's decision on appeal, the court below held inter alia thus:

*"If one takes a hard look at the evidence of the appellant and his witnesses, which I have done, it will be clear that he failed woefully to establish his case before the trial Court. He failed to establish under which law he was claiming the land and he also failed to estab-*

*lish with certainly the land he was claiming. He did not tender any survey plan of the disputed land. I have earlier in this judgment given his vague description of the land which is totally inadequate. It is trite law that the first duty of any claimant to a piece of land is to describe the land with certainty. See Akeredolu v. Akinyemi (1989) 3 NWLR (Part 108) 164 and Olusanmi v. Oshasona (1992) 6 NWLR (Part 245) 22. I am therefore of the firm view that the trial Judge was right in holding that the appellant failed to prove his claim before him and he rightly dismissed it. Green v. Green (1987) 3 NWLR (Part 61) 480 and Olujitan v. Oshatoba (1992) 5 NWLR (Part 241) 326."*

As can be seen, these are concurrent findings of fact of the two courts below which this Court sitting over the appeal will be loath to interfere with unless shown to have been arrived at resulting in miscarriage of justice or a violation of some principles of law or indeed, the same is shown to be perverse. (See Okagbue v. Romaine (1982) 5 SC. 133 at 170 - 171; Alhaji K. O. S. Are & Anor. v. Raji Ipaye (1990) 2 NWLR (Part 132) 298; Lokoyi v. Olojo (1983) 8 SC.61 at 63; Ibodo v. Enarofia (1980) 5 - 7 SC. 42 at 58 and Nwadike v. Ibekwe (1987) 4 NWLR (Part 67) 718). The same not having been demonstrated in the instant case, I will be slow to interfere therewith.

It is for the above reasons and the fuller ones articulately set out in the leading judgment by my learned brother Kutigi JSC, that I too, will answer this issue in the positive. Consequently, I dismiss the appeal and make similar award of costs as set out in lead judgment.

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### **KATSINA-ALU JSC**

I entirely agree with the judgment of my learned brother KUTIGI JSC, which has just been delivered in this appeal. The appeal has no merit and I too dismiss it with costs as awarded.

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### **EJIWUNMI JSC**

As I agree with the reasons given in the said judgment for dismissing the appeal, the appeal is also dismissed by me. I make the order of costs in the sum of N10,000.00 in favour of the defendants.