

SUPREME COURT OF NIGERIA
FRIDAY 27TH SEPTEMBER, 2002. SC. 134/1998
CORAM:- E. O. OGWUEGBU, A. I. IGUH,
A. I. KATSINA-ALU, U. A. KALGO, S. O. UWAIFO, JJSC

AFOLARIN ADENLE APPELLANT
AND
FOLARIN OLUDE RESPONDENT

EVIDENCE - Pleadings - Fraud - Proof - Defendant has burden to prove the element of forgery - Otherwise same will not be accepted (H1)

COURTS - Issues - Determination - Basis - In resolution of issues raised in a case - Court must take into account - Relevant evidence placed before it - And also relevant provisions of Evidence Act (H2)

COURTS - Evidence - Handwriting - Determination - It is not unusual for courts to form their opinion as to handwriting - By comparing genuine specimen with disputed one (H3)

LAND LAW - Identity of land - Issue of identity of land arises - Where defendant raises same in statement of defence - By specifically disputing the location as described in statement of claim (H4)

LAND LAW - Identity of land - Proof - Where boundaries of land is in dispute - Plaintiff who relies on a plan must show that same - Corresponds with the area in dispute (H5)

LAND LAW - Sale - Effect - Since the disputed land was validly granted to respondent - The same cannot be subsequently granted to appellant (H6)

LAND LAW - Title - Proof - Respondent being able to show extent and location of the disputed land - Proved that he has better title to the land (H7)

FACTS

Plaintiff/respondent and defendant/appellant were involved in dispute over the ownership of a parcel of land situate at Ikeja, Lagos. Respondent claimed that the land in dispute was sold to him by duly accredited representatives of lyade family (previous owners of the land) with a purchase receipt (Exhibit A). Respondent further contended that by virtue of a deed of conveyance (Exhibit C), the land was conveyed to him.

But because appellant subsequently laid claim to the said land by purchase from the same lyade family, as per purchase receipt (Exhibit E), followed by a deed of conveyance (Exhibit F), respondent instituted this action at the High Court of Lagos, Ikeja. He sued for a declaration of title over the land and for a perpetual injunction restraining appellant from the land. At the trial, the Olu of Ikeja (DW1) denied signing Exhibit C but admitted signing Exhibit F. At the end of trial, the learned trial judge without proper consideration of the denial by DW1, dismissed respondent's claim. Aggrieved, respondent appealed to the Court of Appeal, Lagos Division. The court allowed the appeal and gave judgment in favour of respondent. Being dissatisfied, appellant filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the lower court was right in making comparison between Exhibits A, B and C and thus coming to the conclusion that D.W.1 was v a signatory to both Exhibits A and C.
2. Whether the lower court was right in coming to the conclusion that the area of land in dispute was very clear and concise.
3. Whether the lower court was right in holding that the plaintiff satisfactorily proved his case.

HELD (Unanimously dismissing the appeal per

UWAIFO JSC)

Pleadings - Fraud - Proof

1. With profound respect to the learned trial Judge, he hardly appreciated the implication of this leisurely finding made against the type of evidence before him. In view of the evidence of P.W.3 coupled with the attestation by the Chief Mag-

istrate of the execution of Exhibit C, a denial simpliciter by any of the alleged signatories that the document was signed by him would be such as to be given a penetrating consideration. This is because such a denial might raise the inference that PW.3, a legal practitioner, could have presented a person other than D.W.1 before the Chief Magistrate. But worse still is that it was not a mere denial by D.W.1. He added that it was Mr. Odunsi who signed Exhibit C. This immediately raises the question of fraud or forgery which by that evidence was made explicitly. But the learned trial Judge would not be in a position to accept that evidence of fraud or forgery when the defendant did not plead it. The burden was on the defendant who introduced the element of forgery to plead it specifically with particulars and prove it. (p. 2867 A)

COURTS - Issues - Determination - Basis

2. A court must take all relevant evidence before it into account in the resolution of the questions arising from the case it has to decide. In doing so, it must also take into cognizance the relevant provisions of the Evidence Act and all other appropriate statutes which have a bearing on the proper decision of the case. The court below was, in my view, correct in pointing out what the learned trial Judge obviously failed to do to compare the admitted signature with the disputed signature of D.W.1. (p. 2870 C)

Evidence - Handwriting - Determination

3. It has also been held that it is not unusual for the courts, in a clear case, to form their own opinion as to handwriting by comparing a genuine specimen with a disputed one. (p. 2870 G)

LAND LAW - Issue - Identity of land

4. Learned counsel for the respondent has submitted that the identity of the land was never made an issue in the case and therefore the appellant cannot base any argument on it. I have no doubt that he is right. The law is that the identity of land in dispute will be in issue only if the defendant in his statement of

defence makes it so by specifically disputing either the area or size covered or the location as shown in the plaintiff's plan (if there is a plan), or as described in the statement of claim.
(p. 2871 H)

B *LAND LAW - Identity of land - Proof*

5. Where there is dispute as to the area and boundaries of the land, in other words if these are put in issue, the plaintiff who relies on a plan must show that his plan corresponds with the area claimed or in dispute. He may do this by showing that the description of the land in his pleading and as given in evidence in support is in complete accord with the plan filed along with the statement of claim and relied on by him. This is to ensure that the land is certain both in size or boundary and location.

D (p. 2872 A)

LAND LAW - Sale - Effect

6. The land already validly sold and conveyed by the family to the respondent was subsequently sold to the appellant through the dishonesty of Oba Momodu Ilo who relied on the possible effect of his denial of the signature he appended to the documents of sale and conveyance given to the respondent. The family having validly granted the land in dispute to the respondent could not subsequently grant the same land to the appellant. The law has long been established that a landowner or grantor cannot derogate from his own grant. (p. 2873 H)

LAND LAW - Title - Proof

G 7. The respondent further showed the area, extent and location of the said parcel of land in a distinct survey plan in relation to the lyade family layout/and proved that no other person, not least the appellant, has a better right to the said parcel of land than himself. He has thus by a clear preponderance of evidence discharged the burden on him to prove his case upon the standard required in such a civil case.

H (p. 2874 D)

NOTABLE POINT OF INTEREST

UWAIFO JSC

1. Available options to court when witness denies signing document

What was therefore before the court for resolution as to the execution of Exhibit C was the denial by D.W.1 that he signed it. I think some options were open to the trial court. First, it could receive evidence on the point from the Chief Magistrate who attested the document. But in view of the official nature of the attestation which therefore ought prima facie to be taken as regularly done unless there is sufficient cause to impugn it, such as evidence of impersonation of the person whose signature was attested, and also, more particularly, as it was over 22 years from the time the document was attested to the time evidence was given at the trial court, the option of the evidence from the person who attested as Chief Magistrate was extremely forlorn. Second, the court could hear evidence from a person familiar with the signature of D.W.1 or who saw him write that signature. I think that evidence came from P.W.3 and ought to have been carefully considered as against the mere denial of the signature by D.W.1. Third, the court may compare the signature admitted by D.W.1 to be his in Exhibit D and F with the alleged signature of his in Exhibit C by virtue of Section 108 (1) of the Evidence Act. Fourth, the court may direct D.W.1 to write his signature for the purpose of enabling the court to compare the signature alleged to have been written by him in Exhibit C by virtue of Section 108 (2) of the Evidence Act. (p. 2868 G)

REPRESENTATION

O. A. Pinheiro Esq. with A. Kamaru Esq., for the Appellant
O. R. Sofola Esq. with L. M. Lawal Esq., for the Respondent

CASES REFERRED TO

Jules v. Ajani (1980) 12 NSCC 222
Emegokwue v. Okadigbo (1973) 4 S.C. 113
Nwawuba v. Enemu (1988) 19 NSCC (pt. 1) 930
R. v. Appeal (1951) 13 WACA 143
Wilcox v. The Queen (1961) 2 SCNLR 296

- Okonkwo v. Kpajie (1992) 2 NWLR (pt. 226) 633
 Awofolaju v. Adedoyin (1992) 8 NWLR (pt. 260) 492
 Pwajok v. Nyam (1994) 2 NWLR (pt. 324) 68
 Aro v. Obaloro (1968) NMLR 238
 Elias v. Omo-Bare (1989) 5 SC 95
 B Oke v. Eke (1989) 19 SC 918

STATUTES REFERRED TO

- Evidence Act, ss. 106, 108(1)(2)(3)
 C Court of Appeal Act Cap. 75 LFN 1990, s. 16

LEAD JUDGMENT BY UWAIFO JSC

This is an appeal from a judgment of the Court of Appeal, Lagos Division, given on 17 July, 1997. The judgment overturned
 D that of the trial court delivered on 5 November, 1993. The case concerns a parcel of land known as plot 61 A in the Iyade Family Layout, off Airport Road, Ikeja, Lagos. The plaintiff claims that the parcel of land was sold to him on 8 April, 1971, by the duly accredited representatives of the said Iyade family, evidenced by a purchase receipt,
 E Exhibit A. Later, by a deed dated 13th May, 1971 (Exhibit C), the land was conveyed to him. But because the defendant subsequently laid claim to the said land by purchase from the same Iyade family, as per purchase receipt dated 6 August, 1 97 1, (Exhibit E), followed
 F by a deed of conveyance dated 3 April, 40 1 978, (Exhibit F), the plaintiff sued for (a) a declaration that he is the owner of the said plot 61A now known as No. 2 Oladosun Street, Ikeja, Lagos, shown in Iyade Family Allotment plan No. ITPA 0448 of 17 July, 196, which plot is covered by a deed of conveyance dated 13th May 1971,
 G registered as No.4 at page 4 in volume 13355 of the Register of deed kept in the Lands Registry in the office at Lagos and (b) an order of perpetual injunction restraining the defendant whether by himself or his servants or agents from the land.

On 5 November, 1993, in a considered judgment, the learned
 H trial Judge (Obadina, J.) dismissed the plaintiff's claim. The plaintiff appealed to the Court of Appeal. On 17th July, 1997, that court allowed the appeal and gave judgment for the plaintiff as per the reliefs sought. The defendant, hereafter referred to as the appellant, has appealed to this court and set down the following issues for de-

termination:

1. Whether the lower court was right in making comparison between Exhibits A, B and C and thus coming to the conclusion that D.W.1 was v a signatory to both Exhibits A and C.

2. Whether the lower court was right in coming to the conclusion that the area of land in dispute was very clear and concise. B

3. Whether the lower court was right in holding that the plaintiff satisfactorily proved his case

From the pleading and evidence of the plaintiff, hereafter referred to as the respondent, the lyade family made a layout of their land in Ikeja as per a plan No. I.T.P.A. 0448 dated 17th July, 1969, drawn by a licensed surveyor, one O. Adekunle Kukoyi (para. 5 of amended statement of claim). Although the appellant specifically denied this averment (para. 3 of the statement of defence), the head of lyade Family, Momodu Ilo, the Olu of Ikeja (D.W.1), in his testimony under cross-examination said: C D

“Our land was in a layout. I cannot remember the name of the surveyor that made it. We had two surveyors, namely (1) Kukoyi. (sic) The layout of the land in dispute was made by Kukoyi”

It is thus clear that lyade family land was out. As regards the number of the layout plan, it is necessary to first refer to an aspect of the said D.W.1’s evidence, again in cross-examination, as follows: E

“I know Mr. Odunsi. He built a house on one of our plots in the layout... We sold the land to him. I see Exhibit ‘D’ now shown to me. It is a conveyance made for Mr. Odunsi. It bears our signature.” F

Exhibit D, a deed of conveyance dated 24 June, 1970 and registered No. 45 at page 45 in volume 1323 of the Lands Registry in the Office at Lagos contains inter alia the following:

“...The Vendors as Beneficial Owners hereby convey unto the purchaser all that piece or parcel of land described as plot 6 & 7 in the lyade family Allotment Plan No. I.T.P.A. 0448 of 17th July, 1969, situate lying and being at Ikeja, Lagos State...” G

This finally establishes the fact that lyade family made a layout as per plan No. I.T.P.A. 0448. H

The respondent’s case is that plot No. 61A in the said layout was conveyed to him by the head of lyade family (D.W.1) and principal members of that family as per a deed of conveyance dated 13 May, 1971, and registered as No. 4 at page 4 in volume 13355 (Ex-

hibit C). But the said D.W.1 denied having signed 35 Exhibit C. He said in cross-examination, after acknowledging his signature on Exhibit D, a deed of conveyance by which land was sold to one Mr. Odunsi who testified as P.W.2:

B *"I can recognise my signature on any other document. I see Exhibit 'C' now shown to me. The signature therein is not my signature. It was written by Mr. Odunsi because when Mr. Odunsi came to us about a plot to his relation, we told him there was no other plot to sell."*

C It was Mr. Odunsi whom the respondent said assisted him to get plot 61A from lyade Family. Mr. Odunsi confirmed this in his evidence. One Olutayo Solarin, a legal practitioner, who testified as P.W.3, said he prepared Exhibit C for the respondent and Exhibit D for Mr. Odunsi. As to how they were executed on behalf of the vendors and by whom, he said:

"I know the Olu of Ikeja, Oba Momodu Ilo. Some of the vendors were illiterate and I therefore prepared the deeds and sent them to the Magistrates' Court for the vendors to execute. Oba Momodu Ilo was the Head of the family and he signed as one of the vendors."

E The said Exhibit C bears the attesting signature of a Chief Magistrate both at the foot of the deed itself to show it was executed before him by the named vendors after the contents were interpreted to them in the Yoruba Language, and also on the survey plan attached thereto. The named vendors were Chief Mohammed Ilo (Momodu Ilo), Nosiru Afariogun and Jimoh Oke. Exhibit D was similarly attested by a Magistrate. The named vendors were same as in Exhibit C.

G That was the evidence as to the execution of Exhibit C by the named vendors. It will be recalled that Momodu Ilo denied signing it. What was the learned trial Judge's finding in this regard? He said:

H *"In the case in hand, the 1st defence witness who was alleged by the plaintiff to have executed the document gave evidence and denied the execution of the said document. I have no reason to doubt his evidence. There was (no) evidence from a handwriting analyst positively saying that the said documents (sic) were executed by the 1st defence witness. The plaintiff did not call any of the other signatories to the documents (sic) to give evidence. I therefore find and hold that the plot in dispute was not sold by the lyade family to the*

plaintiff but to the defendant.”

With profound respect to the learned trial Judge, he hardly appreciated the implication of this leisurely finding made against the type of evidence before him. In view of the evidence of P.W.3 coupled with the attestation by the Chief Magistrate of the execution of Exhibit C, a denial simpliciter by any of the alleged signatories that the document was signed by him would be such as to be given a penetrating consideration. This is because such a denial might raise the inference that P.W.3, a legal practitioner, could have presented a person other than D.W.1 before the Chief Magistrate. But worse still is that it was not a mere denial by D.W.1. He added that it was Mr. Odunsi who signed Exhibit C. This immediately raises the question of fraud or forgery which by that evidence was made explicitly. But the learned trial Judge would not be in a position to accept that evidence of fraud or forgery when the defendant did not plead it. The burden was on the defendant who introduced the element of forgery to plead it specifically with particulars and prove it.: see Jules v. Ajani (1980) 12 NSCC 222. However, by believing the evidence of D.W.1, the learned trial Judge accepted the implication that D.W.1’s signature in Exhibit C was forged. That was perverse finding upon the state of the pleadings and evidence. That the learned trial Judge even admitted such evidence of forgery was an unfortunate lapse because on the authorities it went to no Issue: Emegokwue v. Okadigbo (1973) 4 S.C. 113.

It is therefore a matter for concern that the learned trial Judge preferred the position of D.W.1 to the compelling evidence produced by the respondent as to the due execution of Exhibit C. The Court of Appeal in its judgment per Pats-Acholonu, JCA., in dealing with the denial of D.W.1 as to his execution of Exhibit C, recited Section 108 of the Evidence Act and observed thus:

“The learned trial Judge did not avail himself of the provision of Section 108, (supra), to make a comparative analysis of the signature of the Oba of Lagos (sic: Olu of Ikeja). Exhibit A was there. He was alleged to have signed it. He denied it. The court should have compared the signature in Exh. D which he admitted with the signatures said to be his which are his in Exhs. A and C. When the failure on the part of the trial Judge to make a comparison is combined with

the wholesome (sic) denial in the statement of defence as affecting the part by the Oba of Ikeja and his relations towards the documents mentioned one wonders the basis of the belief of the court below in accepting the denial of Oba Momodu Ilo."

It is clear to me that the learned trial Judge failed to consider
 B the evidence of PW.3 and the fact of the attestation done by the
 Chief Magistrate at the time Exhibit C was executed and to make
 necessary findings thereon. As the solicitor who prepared Exhibit C
 as well as Exhibit D, PW.3 said because some of the vendors were
 C illiterate, he took all three of them to the Chief Magistrate. The court
 clerk read and interpreted the document to the vendors including
 D.W.1, Oba Momodu Ilo. The vendors signed Exhibit C before the
 Chief Magistrate in his chambers who attested the same. Exhibit D,
 the deed of conveyance given by the said vendors to the PW.2 in
 D respect of another land, was similarly executed and attested. So was
 Exhibit F, the deed of conveyance given by the vendors to the appel-
 lant. In his evidence, D.W.1 admitted signing Exhibits D and F. When
 cross-examined he said:

*"I know lawyer Solarin. We did not have a particular lawyer to
 E prepare conveyances. Buyers bring their respective lawyers and we
 used to follow the lawyer that prepare a conveyance to the Magis-
 trate (sic) Court, I have gone with Solarin to the Magistrate (sic) Court
 before. I cannot say how many times."* (Emphasis mine)

The said D.W.1 did not directly deny the evidence of PW.3,
 F (Mr. Solarin), that he took him and others before the Chief Magis-
 trate for the execution of Exhibit C. All he said about Exhibit C was
 that "The signature therein is not my signature. It was written by Mr.
 Odunsi." Does this mean Mr. Odunsi impersonated him before the
 G Chief Magistrate to sign Exhibit C? I have already shown that that
 evidence is inadmissible on the state of the pleadings.

What was therefore before the court for resolution as to the
 execution of Exhibit C was the denial by D.W.1 that he signed it. I
 think some options were open to the trial court. First, it could receive
 H evidence on the point from the Chief Magistrate who attested the
 document. But in view of the official nature of the attestation which
 therefore ought prima facie to be taken as regularly done unless there
 is sufficient cause to impugn it, such as evidence of impersonation of
 the person whose signature was attested, and also, more particu-

larly, as it was over 22 years from the time the document was attested to the time evidence was given at the trial court, the option of the evidence from the person who attested as Chief Magistrate was extremely forlorn. Second, the court could hear evidence from a person familiar with the signature of D.W.1 or who saw him write that signature. I think that evidence came from P.W.3 and ought to have been carefully considered as against the mere denial of the signature by D.W.1. Third, the court may compare the signature admitted by D.W.1 to be his in Exhibit D and F with the alleged signature of his in Exhibit C by virtue of Section 108 (1) of the Evidence Act. Fourth, the court may direct D.W.1 to write his signature for the purpose of enabling the court to compare the signature alleged to have been written by him in Exhibit C by virtue of Section 108 (2) of the Evidence Act. The provisions of Section 108 (1) & (3) of the Evidence Act stipulate as follows:

“108.(1) In order to ascertain whether a signature, writing, seal or finger impression is that of the person by whom it purports to have been written or made, any signature, writing, seal impression admitted or proved to the satisfaction of the court made by that person may be compared with the one which is to be proved although that signature, writing, seal or finger impression has not been produced or proved for any other purpose.

2. The Court may direct any person present in court to write any words or figures or to make finger impressions for the purpose of enabling the court to compare the words, figures or finger impressions alleged to have been written or made by such person.”

The statutory provisions of Section 108 quoted above would have assisted the trial court to determine the credibility of D.W.1 in disowning the signature he was alleged to have appended to Exhibit C. What he ought to have done was to have compared the signature there with the one in Exhibit D or Exhibit F which he admitted he signed. This is what the court below pointed out in its judgment upon the evidence available. Learned counsel for the appellant has argued before us that it was for the plaintiff who had the duty to prove due execution of Exhibit C by D.W.1 to either call a handwriting expert to carry out investigation or invite the trial Judge to compare the disputed signature in Exhibit C with any other signature before the court which was proved or admitted to be that of D.W.1. He has therefore

submitted that the court below was in error to have expected the trial court who is an umpire to take the initiative of making the necessary comparison. With due respect to learned counsel, I find no merit in this submission. Exhibit D containing the admitted signature of D.W.1 was produced by the plaintiff/respondent. Exhibit F which also contains the admitted signature of D.W.1 was produced by the defendant/appellant. These two exhibits formed part of the evidence before the learned Judge. All the necessary evidence upon which the learned Judge would have had to act pursuant to Section 108 of the Evidence Act in order to determine the credibility of D.W.1 on the denial of his signature in Exhibit C was before the court.

A court must take all relevant evidence before it into account in the resolution of the questions arising from the case it has to decide. In doing so, it must also take into cognizance the relevant provisions of the Evidence Act and all other appropriate statutes which have a bearing on the proper decision of the case. The court below was, in my view, correct in pointing out what the learned trial Judge obviously failed to do to compare the admitted signature with the disputed signature of D.W.1. It was crucial to the justice of the case as the D.W.1 denied signing Exhibit C which is a documentary evidence constituting the foundation of the respondent's case. In my opinion, the court below was right in doing the necessary comparison. I have also compared the disputed signature in Exhibit C with that of D.W.1 in Exhibits D and F and am satisfied that the one in Exhibit C is so unarguably indistinguishable from that in Exhibit D as well as Exhibit F that the only reasonable conclusion is that it was also signed by D.W.1: See *Teich v. Northern International Market Co. Ltd* (1987) 4 NWLR (Pt. 65) 441, where the provisions of Section 108 (1) [then Section 107 (1M) of the Evidence Act were considered and applied.) ***It has also been held that it is not unusual for the courts, in a clear case, to form their own opinion as to handwriting by comparing a genuine specimen with a disputed one:*** See *It. v. Smith* 3 Cr. App. R. 87; *R. v. Richard* 13 Cr. App. R. 140; *R. v. Appeal* (1951) 13 WACA 143; *Wilcox v. The Queen* (1961) 2 SCNLR 296. I therefore answer issue I in the affirmative.

Issue 2 is whether the court below was correct in its conclusion that the area of land in dispute was clear and concise. From what the

learned trial Judge found and having regard to the argument now put before this court on this issue, I do not think it is much of a question whether the area of land in dispute was distinct and clear. The first real question is whether the land in dispute, which is known to both parties, was sold to the plaintiff/respondent. The learned trial Judge observed and found as follows: B

“With the evidence of the 1st defence witness from whom the two parties claimed to have bought the land in dispute, which evidence I believe and accept, I do not think the land in dispute was sold to the a plaintiff. I believe it was sold to the defendant by the lyade family.” C

This observation and the finding following it were the result of the learned trial Judge having believed the D.W.1 when he said he did not sign Exhibit C upon which the respondent relied to claim ownership of the land in dispute. D

Having now resolved that that document was duly signed by D.W.1 in respect of a specific parcel of land in lyade family land, the next question is whether the land shown in Exhibit C is the same the appellant lay claim to in reliance on Exhibit F (a deed of conveyance). Learned counsel for the appellant has argued in this court that the respondent did not prove the identity of the land he was claiming. He says that the plot of land pleaded by him was plot No. 61A in plan No. I.T.P.A. 0448 of 17 July, 1969, whereas the evidence he led was in respect of plot No. 61A in of March, 1970. Learned counsel’s contention is that there was no documentary or oral evidence to reconcile the difference between the land pleaded by the respondent and the evidence led by him in court. The further submission is that the respondent did not explain why his claim was in respect of No. 2 Oladosun Street, Ikeja, and that of the appellant was No. 6 Oladosun Street. He cited *Okonkwo v. Kpajie* (1992) 2 NWLR (Pt 226) 633; *Awofolaju v. Adedoyin* (1992) 8 NWLR (pt. 260) 492; *Pwajok v. Nyam* (1994) 2 NWLR (pt. 324) 68 to the effect that in a claim for declaration of title to land, trespass and injunction, the plaintiff must establish with certainty the boundaries of the land in dispute otherwise he cannot succeed. ***Learned counsel for the respondent has submitted that the identity of the land was never made an issue in the case and therefore the appellant cannot base any argument on it. I have no doubt that he is right. The law is that*** E
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G
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the identity of land in dispute will be in issue only if the defendant in his statement of defence makes it so by specifically disputing either the area or size covered or the location as shown in the plaintiff's plan (if there is a plan), or as described in the statement of claim. Where there is dispute as to the area and boundaries of the land, in other words if these are put in issue, the plaintiff who relies on a plan must show that his plan corresponds with the area claimed or in dispute. He may do this by showing that the description of the land in his pleading and as given in evidence in support is in complete accord with the plan filed along with the statement of claim and relied on by him. This is to ensure that the land is certain both in size or boundary and location. See Aro v. Obaloro (1968) N.M.L.R. 238; Elias v. Omo-Bare (1989) 5 S.C. 95; Onyema Oke v. Amos Eke (1989) 19 S.C. 918; Ezendu v. Obiagwu (1986) 9 NWLR (Pt. 91) 908; Salami v. Oke (1987) 4 NWLR (Pt. 63) 1.

The appellant obviously has no case based on the identity of the land in dispute. It was not raised anywhere in his statement of defence, nor even in the evidence. The only matter which arises from para. 4 of the amended statement of claim is that while the respondent pleaded that his deed of conveyance, Exhibit C, registered as No. 4 at page 4 in volume 13355 has attached to it plan No. I.T.P.A. 0448 dated 17th July, 1969 drawn by a surveyor, Mr. Kukoyi, showing plot No. 61 A conveyed to him, the plan actually attached to the said Exhibit C was No. OA 1539/A dated 3rd May, 1970, drawn by Mr. Kukoyi. I have looked at that averment and Exhibit C as a whole and am of the opinion that that was simply a misdescription in the manner the plan in question was pleaded. In the said Exhibit C, reference is made to "all that piece or parcel of land described as plot 61 A in the lyade family Allotment Plan No. I.T.P.A. 0448 of 17th July, 1969, situate lying and being at Ikeja, Lagos State of Nigeria and more particularly described with its dimension and abutments on the plan drawn below and thereon edged 'Red', To Hold the same Unto and To The Use V of the said Purchaser...." The plan referred to as the one "drawn below" is the plan No. OA. 1539/A attached to the said Exhibit C. The plot 61 A conveyed is so labelled, and is edged red therein. The said plan is drawn as "Shewing portion of lyade Family Layout" and the said layout is represented in plan No. I.T.P.A.

0448. In the real sense, the plan No. OA 1539/A attached to Exhibit C is an aspect of the layout in plan No. I.T.P.A. 0448. Nothing pleaded therefore in para. 4 of amended statement of claim and the evidence given can, in my view, be seen to be contradictory or misleading.

Learned counsel for the appellant has also submitted, as I said earlier, that the respondent has the onus to explain why his claim was in respect of No. 2 Oladosun Street, Ikeja, while that of the appellant was No. 6 Oladosun Street. I think, with due respect to learned counsel, that is a completely puerile submission. The respondent pleaded that plot 61 A in lyade family layout is now known as Mo. 8 Oladosun Street. The appellant did not plead to that effect. He pleaded no address. But in evidence he simply said the land in dispute was Mo. 6 Oladosun Street Without amending his pleading that evidence is worthless and indeed inadmissible as it goes to no issue See *George v. Dominion Flour Mills Ltd.* (1963) 1 All ER 71 at 77; *National Investment & Properties Co. Ltd, v. Thompson Organization Ltd.* (1969) N.M.L.R. 99 at 104; *Emegokwue v. Okadigbo* (1973) 4 SC. 113 at 117.) The law is that evidence on a matter not pleaded cannot be received even if extracted in cross-examination: see *Slee Transport v. Oluwasegun* (1971) 8 NSCC 470 at 476-477; *Nwawuba v. Enemu* (1988) 19 NSCC (Pt. 1) 930 at 940.

The land indicated in the plan attached to Exhibit G as shown in relation to the lyade Family Layout and marked plot 61 A, is demarcated with beacons YS 1 330, YS 1 33 1 , YS 1 332, YS 1 333 and YS 1334. The land conveyed in Exhibit D (Mr. Odunsi's land) is also clearly related to the lyade Family Layout. But the land shown in the plan attached to Exhibit F (appellant's deed of conveyance) did not relate it to the lyade Family Layout; it is simply drawn as a single parcel of land although in the body of the deed the land is stated to be plot 61 A. The beacons on one side are given as YS 1330 and YS 1 334 which make the plot correspond with that shown in Exhibit C on one side. The other beacons were altered. Notwithstanding, this has not succeeded to create any doubt that it is the same plot conveyed to the respondent in May, 1971, that was purportedly conveyed to the appellant in April, 1978. ***The land already validly sold and conveyed by the family to the respondent was subsequently sold to the appellant through the dishonesty of Oba Momodu Ilo who relied on the possible effect of his denial of the signa-***

ture he appended to the documents of sale and conveyance given to the respondent. The family having validly granted the land in dispute to the respondent could not subsequently grant the same land to the appellant. The law has long been established that a landowner or grantor cannot derogate from his
 B **own grant.** See *Bonne III v. Hammond* (1954) 14 WACA 499.

Issue 3 is whether the court below was right in holding that the respondent satisfactorily proved his case. The evidence is that the lyade family sold plot 61A in their layout in Ikeja to the respondent.
 C The receipt for the purchase, (Exhibit A dated 8 April, 1971), and the deed of conveyance which followed, (Exhibit C dated 13 May, 1971), were signed by the head of the family and some principal members. The parcel of land was thus sold by the head of the family with the consent of the accredited representatives or principal mem-
 D bers of the family. That is how family land is validly alienated under Yoruba custom as established by the authorities see *Agbloee v. Sappor* (1947) 12 WACA 187; *Linkan v. Ogunsusi* (1972) 5 S.C. 40; *Adejumo v. Ayantegbe* (1989) 6 S.C. (Pt. 10) 76, (1989) 3 NWLR (Pt. 110) 417. **The respondent further showed the area, extent and lo-**
 E **cation of the said parcel of land in a distinct survey plan in relation to the lyade family layout/and proved that no other person, not least the appellant, has a better right to the said parcel of land than himself. He has thus by a clear preponder-**
 F **ance of evidence discharged the burden on him to prove his case upon the standard required in such a civil case.** See *Kodilinye v. Mbanefo Odu* (1935) 2 WACA 336; *Kayaoja v. Egunla* (1974) 12 SC. 55; *Mogaji v. Odofin* (1978) 4 SC. 91; *Onwuama v. Ezeokoli* (2002) 5 NWLR (Pt. 760) 353; (2002) FWLR (Pt. 100)
 G 1213. I accordingly answer both issues 2 and 3 in the affirmative.

I have come to the conclusion that there is absolutely no merit in this appeal. I therefore dismiss it and uphold the judgment of the Court of Appeal, Lagos Division, delivered on 17 July, 1997, with N10,000.00 costs to the respondent against the appellant.

H

IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Uwaifo, JSC, and I am in complete

agreement with the reasoning and conclusion therein.

Accordingly, I, too find no substance in this appeal and the same is dismissed by me with costs as assessed in the lead judgment

KASTINA-ALU JSC

B

I agree entirely with the judgment of my learned brother, Uwaifo, JSC., just delivered. For the reasons which he has given, I also dismiss the appeal with N10,000.00 costs to the Respondent against the appellant.

C

KALGO JSC

I have read before now, the leading judgment in this appeal just delivered by my learned brother, Uwaifo, JSC. I am in full agreement with him that there is no merit in the appeal and it ought to be dismissed.

The facts of this case have been clearly set out in the leading judgment and I do not intend to repeat them here. There are three issues for determination in the appeal and they have been exhaustively and painstakingly been dealt with, in my view, in the leading judgment. I adopt the reasoning and conclusions reached on all of them as mine.

The most important and crucial issue upon which the whole case could be decided is issue I which deals with the comparison of the signatures of Olu of Ikeja, Oba Momodu Ilo (D.W.1) on Exhibit 'A', 'C' and 'D' In his evidence at the trial, DW1 said that what was alleged to be Ms signature on Exhibit 1 'C' was not his signature and it was written there by Mr. Odunsi (PW8). Mr. Odunsi is a friend of the respondent who assisted him to purchase the land in dispute. By his testimony D.W.1 was alleging that exhibit 'C was a forged document. In law, the burden is on him to prove the fact of forgery on exhibit 'C. See *Jutes v. Aiani* (1980) NSCC . He has failed to establish that fact, and therefore forgery on exhibit 'C' is not proved.

From the record of evidence at the trial, Exhibits 'A', 'C' and 'D' were properly tendered and admitted without any objection. The respondent confirmed that both Exhibit, 'A' and 'C' were Signed by D.W.1. Mr. Olutayo Solarin (PW.3) the lyade family lawyer who pre-

pared both Exhibits 'C' and 'D' confirmed that Exhibit, 'C' and 'D' were executed before Chief Magistrate Prince Awolesi at Ikeja in his presence and D.W.1 did not give any evidence to the contrary. P.W.2 also confirmed that Exhibit 'D' was the conveyance given to him by the lyade family when he bought a plot of land from them. D.W.1
B admitted that the lyade family sold a plot of land to P.W.2 and that he (D.W.1) signed Exhibit 'D' as head of the family. Exhibit 'D' was therefore properly admitted in court.

From the above, it is abundantly clear that Exhibit 'D' was
C properly executed and that it contained the signature of DW1 on his own admission. He is however challenging the signature on Exhibit 'C' which was alleged to be his but which he said was "written" by Mr. Odunsi (PW2). He has failed to prove that Exhibit 'C' was a forgery. Therefore, following the evidence of the respondent which was suc-
D cessfully challenged, and that of P.W.3 who witnessed the execution before a chief Magistrate, Exhibit C' was properly admitted. The only question now is whether the signature on Exhibit 'C' was that of DW1. I have already found that Exhibit 'D' was properly admitted at the trial.

E In order to resolve this Issue, (toe Court of Appeal, quite properly in my view, relied on the provisions of Sections 106 and 108 of the Evidence Act to compare the undisputed signatures of D.W.1 on Exhibit 'D' and the disputed ones on Exhibits 'A' and 'C, and came
F to the conclusion that D.W.1 "was certainly signatory to both Exhibits A and C", without the need of the opinion of any handwriting expert. I do not agree with the learned counsel for the appellant that by this act, the Court of Appeal has encouraged the trial Judge to descend into the arena and help the respondent in fighting his case.
G The Court of Appeal was merely invoking the provisions of the relevant law on the issue and was entitled to do so in the circumstances of this case. 'See Section 16 of the Court of Appeal Act (Cap. 75) Laws of the Federation, 1990.

With the above and the more detailed reasons set out in the
H leading judgment of my learned brother, Uwaifo, JSC., I find no merit in the appeal and I dismiss it with N10,000.00 costs in favour of the respondent.