

SUPREME COURT OF NIGERIA
FRIDAY 11TH JULY, 2003. SC. 148/1999
CORAM:- S. M. A. BELGORE, U. MOHAMMED,
A. I. IGUH, A. I. KATSINA-ALU, D. MUSDAPHER, JJSC

EMY J. BILA AUTA APPELLANT
AND
CHIEF WILLY IBE RESPONDENT

LAND LAW - Identity of land - Proof - Plaintiff must prove with certainty - The defined area of land to which his claim is attached - Otherwise such claim must fail (H1)

LAND LAW - Title - Proof - Certificate of occupancy - Weight of - The mere production of the certificate by party - Does not by itself entitle the party - To a declaration of title (H2)

EVIDENCE - Witnesses - Contradictions - Effect - Evidence by appellant and her witnesses are contradictory in material particular - And as such must raise doubt about the veracity of her case (H3)

LAND LAW - Customary right of occupancy - Allocation - Proper authority - By s.41 Land Use Act 1978 - Allocation of such right belongs to Local Government - And does not call for any Emir's stamp (H4)

AND LAW - Title - Grant - Limitation of - By granting title to respondent - The authority has divested itself of interest in the land - Hence it cannot make subsequent grant of same land to appellant - Without revoking the prior grant (H5)

LAND LAW - Appeals - Courts - Judgment - Basis - The judgment was not based on tampering with beacons - Rather it was based on the failure to prove the identity of land (H6)

FACTS

Plaintiff/appellant's contention is that the Jalingo Local Government granted the land in dispute to her under a Certificate of Occupancy No 2224 of 5/1/1983 – Exhibit A. The Exhibit was later

on renewed and was given a new number R2/R/9 – Exhibit B. Much later, appellant applied for conversion of her right of occupancy to a statutory one. The application Exhibit C – was accompanied by a site plan. Appellant further stated that she noticed that respondent trespassed on the land by erecting a building thereon. When her effort to stop respondent from trespassing on the land has failed, she instituted this action at the High Court of Taraba State Jalingo. Appellant’s claims were thus for a declaration of title to the disputed land, damages for trespass and for an order of injunction.

On the other hand, respondent claimed that he was earlier on granted the same piece of land by the same Jalingo Local Government vide a Certificate of Occupancy No. 1095 dated 31/01/1981 – Exhibit F. He claimed that with the consent of the planning authority, he fenced the land and erected a residential building on a part of it. It was in evidence that neither Exhibit A nor B had a description of the land it covered. Though Exhibit C had a site plan attached to it, the plan had nothing on it connecting it to either of Exhibit A, B or C. After hearing, the learned trial judge gave judgment to appellant notwithstanding. Aggrieved respondent appealed to the Court of Appeal, Jos Division. The court allowed the appeal on the basis that appellant failed to prove the identity of the land claimed. Dissatisfied, appellant filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the appellant clearly ascertained or identified the land being claimed by her.

2. Whether the lower court was right when it speculated on the credibility of witnesses at the court of trial where testimonies have not been shown to be perverse.”

HELD (Unanimously dismissing the appeal per

MUSDAPHER JSC)

LAND LAW - Identity of land - Proof

1. In action for declaration of title to land, the onus is on the plaintiff to prove title to a defined area to which a declaration can be attached.

The first duty of a plaintiff who comes to court to claim a dec-

laration of title is to establish to the court clearly the area of land to which his claim relates. It is also trite that before a decree of declaration of title to land can be made, the land to which it is related must be identified with certainty. If the land cannot be properly ascertained, the plaintiff's claim must fail. (p. 2141 F)

LAND LAW - Title - Proof - Certificate of occupancy - Weight of

2. The appellant in proof of the identity of the land has tendered exhibits A and B, both certificates of occupancy issued by the Jalingo Local Government. In both of them there is no description of the land granted, no plot number is mentioned. Exhibit A merely stated it granted unnumbered plot in the "Jalingo Settlement Area" and Exhibit B also mentioned unnumbered plot "in the area known as Sintoli". In Exhibit C, the letter of grant of the Statutory Right of Occupancy, the land granted is plot No. 1 (B) Road in Misc JP3 Layout, Jalingo, the plan attached to Exhibit D does not also help as there is nothing on the plan connecting it with Exhibits A, B, or C. It is trite that the mere production of a Certificate of Occupancy by a party in a suit does not by itself entitle the party to a declaration of title to land. (p. 2142 D)

EVIDENCE - Witnesses - Contradictions - Effect

3. The evidence adduced by the appellant and her two witnesses, especially PW.3, is not only at variance with her pleadings but also contradictory in material particular and magnitude, which in my view must raise substantial doubt in the mind of the trial court as to the authenticity or veracity of the case of the plaintiff. (p. 2142 G)

LAND LAW - Customary right of occupancy - Allocation

4. In the instant case the appellant had woefully failed to prove her entitlement to a decree of declaration since the land she was claiming was not identified or proved. The learned trial Judge merely gave her title because of the existence of the Emir's stamp on Exhibit B. I agree with the submission of the learned counsel for the respondent that under the Land Use

Act, 1978, the allocation of customary right of occupancy is the exclusive preserve of a Local Government and it does not call for any Emir's stamp or seal or approval. See Section 41 thereof. (p. 2142 H)

B *LAND LAW - Title - Grant - Limitation of*

5. When the respondent was granted his plot on the 3/11/1981 by the Jalingo Local Government, the Jalingo Local Government had divested itself of its interest in the land for it to grant the same land in 1983 to the appellant.

C **A Certificate of Occupancy is normally the evidence of exclusive possession and the rights provided for in favour of the person in possession of such certificate. The right of occupancy granted to the appellant was granted to her when the respondent was lawfully enjoying an earlier grant to him of the same land.**

D **At the time the appellant was granted Exhibits A and B, or when Exhibit C was issued by the Jalingo Local Government and by Taraba State Ministry of Lands and Survey, the grantor had no longer the competence to grant the same land to anybody, the right earlier created in favour of respondent not revoked.** (p. 2143 C)

F *LAND LAW - Appeals - Courts - Judgment - Basis*

6. The finding of the learned Justices of the court below which is frowned at was concerned with the observation that the "pillar beacons which were shown to the court when it visited the locus in quo the possibility that these pillar beacons had been tampered with cannot be ruled out."

G **It is further argued that the issue of the tampering of the beacons was not the case of the respondent and the issue did arise for the determination of the appeal.**

H **In any event the observation that the "pillar beacons" might have been tampered with was not the reason why the court below reached its decision. The decision was based on the correct view that:-**

"In the absence of a Certificate of Occupancy with a proper description of the land granted to the respondent (ap-

pellant herein) or a survey plan of the land, the Certificate of Occupancy is valueless. The complaint that the land allegedly granted to the respondent (appellant herein) is unascertainable is well founded. I am unable, with respect, to agree to the learned Chief Judge that the respondent (appellant herein) had proved her case to entitle her to judgment.” (pp. 2144 C & B 2145 C)

REPRESENTATION

Appellant absent. Not represented
Elijah Nyaro, Esq., for the Respondent

CASES REFERRED TO

Kwadzo v. Adjei 10 WACA 264
Oluwi v. Eniola (1967) NMLR 339
Araba v. Asanlu (1980) 5-7 S.C. 78
Ezeokeke v. Uga (1962) 1 All NLR 482
Baruwa v. Ogunshola (1938) 4 WACA 159
Imah v. Okogbe (1993) 9 NWLR (Pt. 316) 159
Osawe v. Osawe (1991) 5 NWLR (Pt. 194) 710
Joshua v. Ogunleye (1990) 2 NWLR (Pt. 135) 745
Idundun v. Okumagba (1976) 9-10 S.C. 227
Ogunbiyi v. Ogundipe (1992) 9 NWLR (Pt. 24) 40
Olusanmi v. Oshasona (1992) 6 NWLR (Pt. 245) 22
Onwugbufor v. Okoye (1996) 1 NWLR (Pt. 424) 252
land vide Maberi v. Alade (1987) 2 NWLR (Pt. 55) 101
Makanjuola v. Balogun (1989) 5 S.C. 82
Atanda v. Ajani (1989) 6 S.C. (Pt. II) 87

LEAD JUDGMENT BY MUSDAPHER JSC

This is an appeal against the decision of the Court of Appeal, Jos Division, by the pontiff who won her case in the High Court of Taraba State, holden at Jalingo, Adamu Aliyu, CJ., wherein the plaintiff in her Amended Statement of Claim claimed against the defendant as per paragraph 15 thereof as follows:-

“Whereof, the plaintiff claims the following reliefs:-

(a) An order of declaration that the plaintiff is the owner in possession of the piece or parcel of land lying and situate at plot No.

1(B) Road, Misc JP3 layout, Jalingo.

(b) *An order of perpetual injunction restraining the defendant, his agents, servants, privies, assigns or functionaries from further acts of trespass on the plaintiff's land.*

B (c) *An order of demolition of the purported illegal structures raised on the plaintiff's plot.*

(d) *An order of N50,000.00 as general and aggravated damages for unlawful trespass and erection of illegal structure on the plaintiff's land."*

C After the closing of pleadings including amendment, the trial commenced in which both parties led evidence and tendered documentary evidence, the court also visited the disputed land. In its judgment delivered on the 29/11/1994, the learned Chief Judge found for the plaintiff thus:-

D "On the whole I am satisfied that the plaintiff has title to the plot situate at No. 1B Road JP3, Jalingo, and proceed to enter judgment for her in terms of her claims and hereby make the following orders:-

E 1. *The plaintiff is declared as the rightful owner of Plot 1B Road JP3 Sintoli Ward, Jalingo.*

2. *The defendant should demolish all structures erected by him on the said plot and leave the plot vacant for plaintiff's full possession.*

F 3. *The defendant should pay the sum of N20,000.00 to the plaintiff as damages."*

G The defendant felt aggrieved with the decision and appealed to the Court of Appeal, Jos Division. At the end of the hearing of the appeal, Edozie, JCA., (as he then was), in his judgment with which Oguntade and Opene, JJCA., concurred, observed:-

H "It is also well settled that a party seeking a declaration of right of occupancy over a piece or parcel of land must be able to identify that piece or parcel of land failing which his case will be dismissed. This is the view taken by the Supreme Court in the case of *Epi v. Aigbedion* (1972) 10 S.C. 53 at 59, In the case in hand, the respondent being the plaintiff in the court below has the burden of proving her entitlement to the right of occupancy of the land in dispute. Her first hurdle is to identify the land which she claimed was allocated to her. It is common ground on both sides that the radical title of the

land is vested in the Jalingo Local Government. The respondent tendered in court as Exhibit A a Certificate of Occupancy No. 2224 from Jalingo Local Government by which she was granted right of occupancy over the land in dispute. It is dated 5th January, 1983. Apart from stating the size of the land to be 100' x 50' and that it is located in Santoli Ward, Jalingo, there is no survey plan of the land nor a description of its boundaries. So too, is Exhibit B, which is a renewal of Exhibit A and Exhibit C, which is an application to the Ministry of Lands and Survey, Taraba State for the conversion of Exhibits A and B to statutory right of occupancy. There is also Exhibit D, a letter dated 22/6/92 whereby the respondent reported the appellant to the General Manager, Urban Planning, Jalingo, I am aware that there is a site plan attached to that letter and a plot in the plan verged red. Apart from the fact that there is no explanatory note to show that the area verged red is the land in dispute, there is nothing to show that it is related to Exhibits A, B and C. P.W.3, Musa Munkaila is an official from the Ministry of Lands and Survey. Part of the evidence on page 14 lines 10 to 17 reads as follows:-

“The plaintiff was granted an approval for a Certificate of Occupancy on 2/6/92. There is nothing to show that the land has been clearly mapped out. Normally after grant the applicant is to apply for survey to be undertaken by the Ministry. In this case the plot has not been demarcated with beacons by our Ministry.”

Under cross-examination, the witness on page 14 lines 31 to 35 said:

“From TPA-TPB-47.98 metres. From TPB-TPC 43.00 metres. From TPC-TPD 29.00 metres”

There is no exhibit bearing the symbols referred to above. Even if one were to assume that they refer to pillar beacons which were shown to the court when it visited the locus in quo, the possibility that those pillar beacons had been tampered with cannot be ruled out. That this is not just a mere speculation is borne out from the evidence of the appellant when on page 21 lines 22 to 25 of the record he said:

“when the plot was given to me by the Local Government there were four beacons but at last the plaintiff removed the four beacons by herself that was in 1992.”

In the absence of a Certificate of Occupancy with a proper

description of the land granted to the respondent or a survey plan of the land, the Certificate of Occupancy is valueless. The complaint that the land allegedly granted to the respondent is unascertainable is well founded. I am with respect, unable to agree with the learned Chief Judge that the respondent had proved her case to entitle her to judgment.”

The defendant’s appeal was accordingly allowed and the plaintiff’s case was ordered to be dismissed. Now, the plaintiff has appealed to this court. Three grounds of appeal accompanied the Notice of Appeal. Two issues for determination have been identified, formulated and submitted to this court for the determination of the appeal. The issues read as follows-

- “1. Whether the appellant clearly ascertained or identified the land being claimed by her.
2. Whether the lower court was right when it speculated on the credibility of witnesses at the court of trial where testimonies have not been shown to be perverse.”

Before the examination of the issues raised for the determination of the appeal, it shall be necessary at this stage to state the background facts of the dispute between the parties.

The case of the appellant as the plaintiff is that in 1983, the Jalingo Local Government granted a piece of land to her under a Certificate of Occupancy No. 2224 of 5/1/1983.

That is Exhibit A in the proceedings. The Certificate of Occupancy was renewed on the 20/2/1985 and was given a new number R2/R/9 that is Exhibit B. In 1990, the plaintiff applied for the conversion of the right of occupancy to a statutory one and approval was given. Exhibit C, the application to convert the customary right of occupancy to the Ministry of Lands and Survey was accompanied by a site plan. The plaintiff alleged that in 1992 the defendant trespassed and encroached on part of the land where he started to build. Through Exhibit D, a letter of complaint to the General Manager, Urban Planning Authority who unsuccessfully prosecuted the defendant in the Magistrates’ Court for the trespass and the illegal structure. It was when the defendant refused to stop the building, that the plaintiff took this action.

The defendant on the other hand claimed that he was granted a piece of land by the Jalingo Local Government vide a Certificate of

Occupancy No. 1095 dated 31/10/1981, Exhibit F in these proceedings. The plot was situated at No. 40 Sports Council Road, Santoli Ward, Jalingo. The defendant claimed that with the consent of the planning authority, he fenced the entire land and erected a residential building the rein in 1984.

At the hearing of the appeal, in this court, the plaintiff herein referred to as the appellant was absent and unrepresented this court deemed her appeal as having been argued. The learned counsel for the respondent adopted the arguments canvassed in the brief. I shall now deal with the issues as argued in the appellant's brief.

Issue No. 1

This is concerned with the question whether the court below was right or wrong in holding that the appellant did not prove the identity of the land she is claiming declaration of title to. It is firstly submitted that the appellant, through her pleading and evidence established the identity of the land she is seeking declaration of title for. It is argued that of the five ways of proving title to land, the appellant proved her title by documentary evidence and also by acts of ownership vide *Idundun v. Okumagba* (1976) 9-10 S.C. 227 at 246; *Onwugbufo v. Okoye* (1996) 1 NWLR (Pt. 424) 252. The learned counsel argued that the appellant by tendering her Certificate of Occupancy over title to the land, she had done all what was necessary for her to be entitled to a declaration of title to land. On the issue of act of ownership the appellant testified further that she erected "a four bedroom flat" on the land.

It is again submitted that the appellant pleaded and led evidence that she is the statutory owner of the land in dispute lying and situate at plot No. 1B Road Misc JP3 Layout near the Ministry of Education. It is argued that the appellant needed not even to prove the allegation because the respondent evasively traversed the said averment in his pleadings. See *Lewis & Peat N.I.R v. Akhimien* (1976) 7 S.C. 157; *Odiba v. Muemue* (1999) 6 S.C. (Pt.I) 157; (1999) 10 NWLR (Pt. 622) 174, *Wallersteiner Moir* (1974) 1 WLR 991.

It is again submitted that the appellant had by tendering Exhibits A, B, C and D, clearly established the identity of the land especially in Exhibit D which contained a survey plan of the land. The learned counsel referred to *Adelaja v. Alade* (1999) 4 S.C. (Pt.I) 81; (1999) 6 NWLR (Pt. 605) 544, *Elias v. Omo-Bare* (1982) 5 S.C. 25,

Omoregie v. Idugiemwanye (1985) 2 NWLR (Pt.5) 41; Adimora v. Ajufo (1988) 3 NWLR (Pt. 80) 1, Adepoju v. Oke (1999) 3 S.C. 28; (1999) 3 NWLR (Pt. 594) 154. Further to the above, P.W.3 testifies that the respondent “has encroached into the plaintiff’s plot from TPB-TPC that means the whole of 38 meters on which the defendant’s building is situated lying within plaintiff’s plot.” This evidence of P.W.3 was not challenged and accordingly the trial court was right to rely upon it and to come to the conclusion that the appellant had proved the identity of the land vide *Maberi v. Alade* (1987) 2 NWLR (Pt. 55) 101, *Ezeokeke v. Uga* (1962) 1 All NLR 482.

It is finally submitted that the Court of Appeal was in error when it held that appellant failed to identify the land she was seeking declaration of title to, by tendering Exhibit D and by the evidence of P.W.3, the identity of the land was proved. It is argued that the Court of Appeal was wrong to have ignored these pieces of evidence.

It is submitted on the other hand by the respondent’s counsel, that the Court of Appeal acted correctly when it held that the land claimed by the appellant was unascertainable because the Certificates of Occupancy, particularly Exhibits A, B and C did not contain any description of the land granted to the appellant. It is further submitted that evidence led by the appellant was completely at variance with the appellant’s pleadings. It is argued further that the plan contained in Exhibit D does not show any connection with Exhibits A, B, and C. It is further submitted that P.W.3 Musa Munkaila, an official from the Ministry of Lands and Survey testified “that there is nothing to show that the land has been clearly mapped out” and that the plot had not been demarcated with beacons. Accordingly, the land which the appellant was claiming is not properly identified, See *Epi v. Aigbedion* (1972) 10 S.C. 53, *Etim v. Oye* (1978) 6-7 S.C. 91.

It is further argued that P.W.3 contradicted himself when in one breath he said the land was not demarcated with beacons and claims to give the measurements of beacons which were not tendered in any document. It is submitted that in the absence of the proof of the identify of the land, the trial court ought to have dismissed the appellant’s claims vide *Nwobodo Ezendu & Ors. v. Isaac Obiagwu* (1986) 3 S.C. 1.

It is also argued that the trial Judge was in error to have found for the appellant since having found that the competing titles of the

parties having originated from a common grantor, the Jalingo Local Government, the first grant in time takes priority. See *Atanda v. Ajani* (1989) 6 S.C. (Pt. II) 87; (1989) 3 NWLR (Pt. 111) 538. The evidence clearly showed that the respondent was on the land earlier than the appellant. The respondent indeed had erected his building on his plot between 1981 to 1984. His Certificate of Occupancy No. 1095 was issued on the 31/10/1981 as evidenced by Exhibit F. The plot is situate at No. 40 Sports Council Road, Jalingo. It is also submitted that the appellant's Exhibits A and B were the same customary right of occupancy with different numbers issued by the same Jalingo Local Government at later times and referred to the appellant's plot as situate at No. 1B Road JP3 Layout, Sintoli Ward, Jalingo. It is also submitted that the appellant's title, Exhibits A and B did not have street name nor plot numbers. Wherefore, it is further argued that the learned trial Judge was in error to rely on the Emir's seal to hold that the appellant's certificate was more "authentic." It is again argued that the evidence led by the appellant contained material contradiction and her case ought to have been dismissed vide *Ogunbiyi v. Ogundipe* (1992) 9 NWLR (Pt. 24) 40. It is further submitted that the mere tendering of a survey plan which was vague and did not contain any explanations was not enough to prove the identity of the land the appellant was seeking declaration of title for. There was no connection between the plan with either Exhibit A or B and as such could not confer title. See *Osawe v. Osawe* (1991) 5 NWLR (Pt. 194) 710, *Araba v. Asanlu* (1980) 5-7 S.C. 78.

Now, ***in action for declaration of title to land, the onus is on the plaintiff to prove title to a defined area to which a declaration can be attached.*** See *Odesanya v. Ewedimi* (1962) 1 All NLR 320. ***The first duty of a plaintiff who comes to court to claim a declaration of title is to establish to the court clearly the area of land to which his claim relates. It is also trite that before a decree of declaration of title to land can be made, the land to which it is related must be identified with certainty. If the land cannot be properly ascertained, the plaintiff's claim must fail.*** See *Baruwa v. Ogunsola* 4 WACA 59, *Kwadzo v. Adjei* 10 WACA 264, *Oluwi v. Eniola* (1967) NMLR 339. In the case of *Lordye v. Ihyambe* (2000) 12 S.C. (Pt. II) 126; (2000) 15 NWLR (Pt. 692) 675, Wali, JSC., said:

“The Court of Appeal was in my view right when it stated that:

“The onus is on the plaintiff seeking for a decree of declaration of title to show clearly the area to which his claim relates xxx the plaintiff can do this by such oral description of the land that any surveyor acting on such description can produce a plan of the land he claims.”

The only evidence given as regards the boundary of the land in dispute is the mention of the locus bean tree. It is vague and incomprehensible. In an action which seeks the determination of boundaries between the parties to the dispute it is for the plaintiff to identify and prove the existing boundaries and where none is identified and proved, the court has no power to demarcate one. See *Amata v. Modekwe* (1954) 14 WACA 580, *Akubueze v. Nwakuche* (1959) SCNLR 616’.

In the instant case, **the appellant in proof of the identity of the land has tendered exhibits A and B, both certificates of occupancy issued by the Jalingo Local Government. In both of them there is no description of the land granted, no plot number is mentioned. Exhibit A merely stated it granted un-**
numbered plot in the “Jalingo Settlement Area” and Exhibit B also mentioned unnumbered plot “in the area known as Sintoli”. In Exhibit C, the letter of grant of the Statutory Right of Occupancy, the land granted is plot No. 1 (B) Road in Misc JP3 Layout, Jalingo, the plan attached to Exhibit D does not also help as there is nothing on the plan connecting it with Exhibits A, B, or C. It is trite that the mere production of a Certificate of Occupancy by a party in a suit does not by itself entitle the party to a declaration of title to land.

Further to the above, **the evidence adduced by the appellant and her two witnesses, especially PW.3, is not only at variance with her pleadings but also contradictory in material particular and magnitude, which in my view must raise substantial doubt in the mind off the trial court as to the authenticity or veracity of the case of the plaintiff.** See *Oyeyiola v. Adeoti* (1973) NMLR 10. **In the instant case the appellant had woefully failed to prove her entitlement to a decree of declaration since the land she was claiming was not identified or proved. The learned trial Judge merely gave her title because of the exist-**

ence of the Emir's stamp on Exhibit B. I agree with the submission of the learned counsel for the respondent that under the Land Use Act, 1978, the allocation of customary right of occupancy is the exclusive preserve of a Local Government and it does not call for any Emir's stamp or seal or approval. See Section 41 thereof. B

Before I part with this issue, I think it is also important to bear in mind that even if the appellant had properly established the area she was claiming, her claims ought to fail, because it was common ground both the appellant and the respondent alleged grant were made by a common grantor, the Jalingo Local Government. It is not disputed that the appellant was granted the land much later in time than the respondent. C

Accordingly, ***when the respondent was granted his plot on the 3/11/1981 by the Jalingo Local Government, the Jalingo Local Government had divested itself of its interest in the land for it to grant the same land in 1983 to the appellant.*** See Atanda v. Ajani supra. ***A Certificate of Occupancy is normally the evidence of exclusive possession and the rights provided for in favour of the person in possession of such certificate. The right of occupancy granted to the appellant was granted to her when the respondent was lawfully enjoying an earlier grant to him of the same land.*** See Joshua v. Ogunleye (1990) 2 NWLR (Pt. 135) 745. ***At the time the appellant was granted Exhibits A and B, or when Exhibit C was issued by the Jalingo Local Government and by Taraba State Ministry of Lands and Survey, the grantor had no longer the competence to grant the same land to anybody, the right earlier created in favour of respondent not revoked.*** D E F G

In any event, the appellant had failed to ascertain the boundaries. The law is well settled by a long line of authorities that the onus of proof of the identity of the land mass lies on the plaintiff who seeks a decree of declaration of title to the land. Where a plaintiff fails to prove the identity of the land in dispute his claim will be dismissed. H See for example Makanjuola v. Balogun (1989) 5 S.C. 82; (1989) 3 NWLR (Pt. 108) 192, Nigerian Engineering Works Ltd. v. Denap Ltd. (2001) 12 S.C. (Pt.II) 136; (2001) 18 NWLR (Pt.740) 726. I am in complete agreement with the decision of the court below on this

matter and I accordingly resolve this issue against the appellant.

Issue No. 2

The complaint here is concerned with whether the court below was right when it speculated on the credibility of witnesses at the court of trial where testimonies have not been shown to be perverse.

- B It is submitted that an appeal court should not ordinarily disturb the findings of facts of the trial court, unless it is shown that the finding is perverse or cannot be supported having regard to the evidence adduced. Learned counsel referred to a number of cases on this point.
- C It is submitted that the learned Justices of the court below were in error to have embarked in the assessment of the credibility and the demeanour of the witnesses of the appellants and thereby making far-reaching decisions on the facts which occasioned miscarriage of justice. ***The finding of the learned Justices of the court below***
- D ***which is frowned at was concerned with the observation that the “pillar beacons which were shown to the court when it visited the locus in quo the possibility that these pillar beacons had been tampered with cannot be ruled out.” It is further argued that the issue of the tampering of the beacons***
- E ***was not the case of the respondent and the issue did arise for the determination of the appeal.***

- The learned counsel for the respondent argued that the Court of Appeal was justified in making the observation because firstly, the appellant never pleaded the beacons referred to by the PW.3 in the evidence. Secondly, none of the Exhibits A, B or C referred to any beacons and thirdly, PW.3 contradicted himself in one breath when he said the land in dispute has not been “mapped out” and “in this case the plot has not been demarcated with beacons by the Ministry,” and in another breath he mentioned the existence of the beacons. In any event, the existence of the beacons was never pleaded.

- I have carefully considered the argument of the counsel on this issue. In my view the learned counsel for the appellant is raising a storm in a tea cup. The Justices of the court below reached their
- H decision because the appellant had failed to identify the land in dispute. It was clearly manifest that, in any event, even if the appellant had established the identity of the land she was claiming, the respondent was earlier granted the same land by the Jalingo Local Government. As mentioned above, when the local government purported

to grant the land to the appellant, it had no longer any interest in the land it granted to the appellant. The findings of the learned trial Judge are clearly perverse and could not be supported having regard to the evidence accepted by him. He had found that the respondent was granted the land in 1981 and the same land was granted to the appellant a few years later and there was no evidence or suggestion that the respondent's title has been revoked. The only reason the learned trial Judge declared the land to the appellant was because the certificate, Exhibit B carried the Emir's stamp and he erroneously held that it was more "authentic." It is trite law that in an action for a decree of declaration of title to land, a plaintiff must succeed on the strength of his own case and not on the weakness of the defendant's. **In any event the observation that the "pillar beacons" might have been tampered with was not the reason why the court below reached its decision. The decision was based on the correct view that:-**

"In the absence of a Certificate of Occupancy with a proper description of the land granted to the respondent (appellant herein) or a survey plan of the land, the Certificate of Occupancy is valueless. The complaint that the land allegedly granted to the respondent (appellant herein) is unascertainable is well founded. I am unable, with respect, to agree to the learned Chief Judge that the respondent (appellant herein) had proved her case to entitle her to judgment."

Further to the above, the observation on the tampering of the beacons was not speculative as asserted by the appellant, it is manifest that the respondent testified that the appellant had tampered with his beacons in 1992 and the trial Judge completely ignored this evidence. The Court of Appeal was right to refer to it.

I accordingly also resolve the second issue against the appellant. In the result this appeal fails and is dismissed by me. I affirm the decision of the court below. The respondent is entitled to costs against the appellant which I assess at N10,000.00

BELGORE JSC

In a case for declaration of any right or title over land, that land must be described with certainty so that the parties are ad idem as to its identity. This is because a party will not be found to litigate on

an unidentifiable object. A survey plan or clear map of the area of land in dispute is identified, or land features - streams, rivers, hills, historical monuments, trees and other permanent or semi-permanent objects - are clearly pleaded and identifiable on the land in dispute. Imah v. Okogbe (1993) 9 NWLR (Pt.316) 159, Olusanmi v. Oshasona (1992) 6 NWLR (Pt. 245) 22; Baruwa v. Ogunshola (1938) 4 WACA 159. It is a cardinal principle in land disputes to clearly indicate the identity of the land, even if by boundary neighbours whose evidence can clearly show the land in a visit to locus in quo - Okorie v. Udom (1960) SCNLR 326; Briggs v. Briggs (1986) 5 NWLR (Pt. 41) 362.

The onus is always on the plaintiff to prove the identity of the land he claims because no court will give judgment to plaintiff on a land he has not identified with certainty.

In this case now on appeal before us, the plaintiff holds so many documents indicating grants by local governments and state governments, but none of these documents clearly indicates the land granted. The principal witness 3, testifying at the trial court, vividly explained what the plaintiff failed to do to give certainty to his grant. He was, after offer or grant, to apply for a survey of the land granted which would be undertaken by the Ministry responsible for land. Apparently the plaintiff never did this. What he holds therefore are no more than declaration of intent to grant him land in the area indicated.

For the foregoing reasons and further reasons in the judgment of my learned brother, Musdapher, JSC., I dismiss this appeal. I award N10,000.00 costs to the respondent against the appellant.

G

MOHAMMED JSC

I have had the advantage of reading the judgment of my learned brother, Musdapher, JSC., in draft, and I agree with him that this appeal ought to be dismissed. My learned brother considered the salient issues and has left nothing for me to add. I dismiss the appeal and abide by the consequential orders made in the lead judgment.

IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Musdapher, JSC., and I entirely agree that this appeal is without substance and ought to be dismissed.

The main issue for determination in this appeal is whether the appellant who sought for declaration of title to the land in dispute, damages for trespass and perpetual injunction was able to establish the identity of the piece or parcel of land she claimed. In this regard, the law is well settled that before a declaration of title to land should be granted, the area of land to which it relates must be ascertained with certainty and precision, the acid test being whether a surveyor taking the record could produce a survey plan showing accurately the land to which the declaration of title has been given. See *Ate Kwadzo v. Robert Adjei* (1944) 10 WACA 274, *Udekwu Amata v. Modekwe* (1954) 14 WACA 580, *Ezeokeke & Ors. v. Umunocha Uga & Ors.* (1962) All NLR (Pt. 1) 477, *Araba v. Asanlu* (1980) 5-7 S.C 78, *Imah v. Okogbe* (1993) 9 NWLR (Pt. 316) 159, *Olusanmi v. Oshasona* (1992) 6 NWLR (Pt. 245) 22 at 36. Indeed, it has been stated time without number that in a claim for declaration of title to land, the first duty of a plaintiff is to establish with certainty before the court the boundaries and precise area of land to which his claim relates. See too *Epi v. Aigbedion* (1972) 10 S.C. 53 at 59. If it is not so ascertained, the claim for declaration of title in respect of such an uncertain piece or parcel of land is bound to fail and must be dismissed. See *Oluwi v. Eniola* (1967) NMLR 339.

It is common ground in the present case that both parties claimed to have acquired the land in dispute from a common grantor, namely, the Jalingo Local Government. The appellant, as plaintiff before the trial court in proof of her title to the land in dispute tendered and relied on Exhibit A, a Certificate of Occupancy No. 2224 dated the 5th day of January, 1983, issued to her by the said Jalingo Local Government. Apart from stating the size of the land concerned to be 100 feet by 50 feet and that it is located in Sintoli Ward, Jalingo, the said Certificate of Occupancy neither indicated any survey plan of the land nor gave a description of its boundaries. The same is the case with Exhibit B, which is a renewal of Exhibit A and Exhibit C, which is an application by the appellant to the Ministry of Lands and Survey, Taraba State, for the conversion of the said Exhibits A and B

to a Statutory Right of Occupancy. There is also the letter Exhibit D dated the 22nd June, 1992, tendered by the appellant. Again, there is nothing in Exhibit D to show that it is related either to the land in dispute or to Exhibits A, B or C. I think it can be said that all the documents relied upon by the appellant in proof of her title to the land in dispute failed to show the identity of the land concerned.

Apart from the above, there is also the evidence of the appellant's witness, P.W.3, Musa Munkaila, who is an official of the Taraba State Ministry of Lands and Survey. This witness testified as follows:-

"The plaintiff was granted an approval for a Certificate of Occupancy on 2/6/92. There is nothing to show that the land has been clearly mapped out. Normally, after grants, the Appellant is to apply for a survey to be undertaken by the Ministry. In this case the plot has not been demarcated with beacons by our Ministry".

It is plain to me that the identity of the land claimed by the appellant by virtue of Exhibits A, B and C is clearly at large and unascertainable. It had neither been surveyed nor demarcated with beacons by the Taraba State Ministry of Lands and Survey. I am in entire agreement with the court below that in the absence of an appropriate Certificate of Occupancy with a proper description of the land granted to the appellant or a survey plan thereof, it cannot be said with any degree of certainty she established that Exhibits A, B or C relate to the land in dispute. In my view, the Certificates of Occupancy, Exhibits A, B and C must be regarded as weightless and of no consequence. I think the complaint that the land allegedly granted to the appellant is unascertainable is well founded. Issue 1 is accordingly resolved against the appellant.

There is another point of significance that arises for consideration in this appeal. This is the fact that even if the appellant had succeeded in proving that the identity of the land covered by Exhibits A, B and C is the same as the land in dispute, a second hurdle would still have faced her. As I have already pointed out, both parties claimed to have acquired the land in dispute from a common grantor, the Jalingo Local Government. Where, as in the present case, the two or more competing documents of title upon which parties to a land in dispute rely for their claim of title to such land originated from a common grantor, the doctrine of priorities pursuant to the well

recognised maxim, *qui prior est tempore, potior est jure*, meaning that he who is first has the strongest right, dictates that the first in time takes priority. See *Atanda v. Ajani* (1989) 6 S.C. (Pt.II) 87; (1989) 3 NWLR (Pt.111) 538.

In this regard, the respondent's customary Right of Occupancy in respect of the land in dispute, Exhibit F, was issued by the Jalingo Local Government on the 31st October, 1981. Between the years 1981 and 1984, he commenced and completed the erection of a house thereon. On the other hand, the appellant's customary rights of occupancy, Exhibits A and B, were issued by the same Jalingo Local Government. It is clear from the above facts that even if Exhibits A and B were to relate to the land in dispute, the respondent's title to the land must, in law, take priority over that of the appellant. Besides, it is settled law and in accordance with common sense that after a party has effectively divested himself of his interest in land or other res, no right naturally vests in him to deal with such land or res any further for *nemo dat quod non habet*, meaning that no one can give that which he does not have. See. *Okafor Egbuche v. Chief Idigo* 11 NLR 140, *Adamo Akeyu & Anor. v. Chief Suenu & Ors.* 6 NLR 87, *Sanyaolu v. Coker* (1983) 3 S.C. 124 at 163-164, *Ugo v. Obiekwe* (1989) 2 S.C. (Pt. II) 41; (1989) 1 NWLR (Pt.99) 566 etc. Accordingly, the Jalingo Local Government having lawfully granted the piece or parcel of land in dispute to the respondent in 1981 was left with nothing to grant to the appellant subsequently in 1983 or 1985 during the subsistence of the respondent's grant.

It is for the above and the more detailed reasons contained in the judgment of my learned brother, Musdapher, JSC., that I, too, find no substance in this appeal. The same is hereby dismissed by me with costs to the respondent against the appellant which I assess and fix at N10,000.00

KATSINA-ALU JSC

I read in advance the judgment delivered by my learned brother, Musdapher, JSC. I entirely agree with him that the appeal is devoid of merit. For the reasons he has given. I too would dismiss the appeal with costs as awarded.