

SUPREME COURT OF NIGERIA
13TH JANUARY, 2006 SC. 271/2002
CORAM:- I. L. KUTIGI, U. A. KALGO, D. MUSDAPHER, A. M.
MUKHTAR, W. S. N. ONNOGHEN, JJSC

BENEDICT OTANMA PLAINTIFF/APPELLANT
AND
KINGDOM YODUBAGHA DEFENDANT/RESPONDENT

LAND LAW - Title - Proof - Identify of land - Must be proved by claimant
- With clear description and certainty (H1)

LAND LAW - Title - Identity of land - Pleadings - Burden of proof - Failure
of plaintiff - To establish identity of land claimed - Will occasion dismissal
of the claim (H2)

LAND LAW - Title - Identity of land - Mere stating the street and its
number - Is not proof of identity - And visit to the locus in this case - Shows
that identity was not proved (H3)

LAND LAW - Issues - Documents - Identity of land - Was not raised by
court suo motu - And once identity is not established - Document of Sale
- Will not be considered (H4)

LAND LAW - Title - Proof - Burden on plaintiff - To prove his case on
its own strength - Not having been discharged - Weakness of the defence
- Will not be considered (H5)

LAND LAW - Title - Pleadings - Variation - Where evidence is at variance
with pleadings - Claim of ownership is not proved (H6)

LAND LAW - Title - Possession - Documents - Mere production of
documents of title - Without pleading and proving vendor's root of title -
Does not permit reliance on acts of possession (H7)

FACTS

Before the Port Harcourt High Court the plaintiff/appellant filed an action against the defendant/respondent. Appellant claimed inter alia, a declaration that by virtue of the Land Use Act 1978, he is deemed to be the holder of a statutory right of occupancy and is, therefore entitled to a grant of certificate of occupancy in respect of a piece of developed land now known as No. 34 School Road, Mile 3 Diobu Port Harcourt. Parties called witnesses and some documents were tendered in respect of their respective pleadings. The trial judge visited the locus in quo and after address of counsel gave judgment dismissing the appellant's claim in its entirety. The court found that appellant failed to prove with certainty the identity of the land claimed by him.

Appellant appealed to the Court of Appeal which dismissed his appeal by a majority decision. Still dissatisfied, he has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

"(1) Whether the lower court was right to have gratuitously raised the issue of identity of the disputed land when the same did not arise from the pleading. [Grounds 1 and 2]

(2) Whether the appellant established his claim of being entitled to the grant of Statutory Right of Occupancy to the disputed plot as against the respondent."

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

Identify of land - Must be proved with certainty

1. The law is well settled that in an action for declaration of title to land, the onus is on the plaintiff to establish with certainty the identity of the land in dispute to which his claim relates. The name or etymology of a piece of land is not necessarily indicative of its identity. In a claim for declaration of title to land the first and foremost duty on the claimant is to describe the land in dispute with such reasonable degree of certainty and precision that its identity will no longer be in doubt. In other words the land must be identified positively and without any ambiguity. The mere mention of the

name of the land in dispute without stating clearly the area of the land to which the claim relates is not enough description. (p. 381 D)

Failure of plaintiff - To establish identity of land claimed

2. Although a plaintiff seeking a declaration of title to land has the primary duty of burden to prove clearly and unequivocally the precise area to which his claim relates, however, the burden will not arise where the identity of the land in dispute does not arise from the pleadings. That is to say where the defendant by his pleadings admitted the description location features and dimension of the land. In such a circumstance, the identity of the disputed land is not a question in issue and does not require proof. But it must be stressed that in civil matters, the general burden of proof in the sense of establishing his case, is on the plaintiff. A plaintiff claiming a decree of declaration of title to land has the primary duty to succinctly depict the dimensions and the identity of the land, the subject matter of the action. The failure of the plaintiff to identify or ascertain the land, its dimensions, and locality will result in the dismissal of the suit. And order for declaration of title being discretionary cannot be made by any court when the identity of the land is not clearly and unambiguously established. (p. 381 G)

Identity of land - Mere stating the street number - Is not proof

3. It was in evidence that the parties partitioned the land equally between the purchasers and the appellant put up a concrete bungalow of 12 rooms, kitchen line and toilet (bucket system). The appellant also pleaded that he fenced the buildings with concrete cement blocks. In his Statement of Defence the respondent denied all these allegations. It was therefore the bounden duty of the appellant to establish his claims including those relating to identity of the land. Upon a calm view of the pleadings of the parties each of the parties describing a different property notwithstanding that each is referring to the property as 34, School Road, Diobu Mile 3, Port Harcourt. It is manifest from the pleadings and the evidence that the parties disagreed as to the location, name of the land, the type of buildings, the dimensions of the land upon which the buildings were erected, the

number of rooms. The existence or non-existence of “*outer buildings*” and the existence or non-existence of a concrete cement block round the buildings.

It was perhaps to resolve these conflicts that made the trial judge B to visit the locus-in-quo, where the learned trial judge observed the non-existence of the “*outer buildings*” and the non-existence of the perimeter wall surrounding the buildings. In my view the learned trial judge was justified in reaching his conclusion that the appellant had failed to establish C by credible evidence the identity of the land he was claiming. As mentioned above, no court will grant a decree of declaration of title to land, or a decree of entitlement to a right of occupancy, or to an injunction over a piece of land whose identity or certainty is not precise and clear.
(p. 382 E)

D
Identity of land - Was not raised by court suo motu
4. To answer the question posed, the issue of the identity of the land in this case is a live issue raised by the parties in their pleadings and both the E trial Court and the Court below were right in deciding the issue. It is also my view, that the appellant had failed to establish by credible evidence the identity of the land he is claiming a decree of declaration of title and his suit was rightly dismissed.

F The appellant, having failed to discharge the crucial issue of the identity of the land he is claiming a decree of declaration of title, the issue as raised by the appellant on the use of Exhibit “A” is of no moment. Once the identity of the land is not clear, the case of the appellant is doomed to fail. I accordingly see no need to comment on the question of the use of G Exhibit A made by the trial judge. (p. 383 E)

Title - Proof - Burden on plaintiff
5. Now, this issue is concerned with the findings of fact by the learned trial H judge as affirmed by the majority decision of the Court of Appeal. The gravamen of the complaint of the appellant is the improper or inadequate evaluation of the evidence particularly the documentary evidence and the proper inference to be drawn from them.

Now, In NGENE VS. EGBO [2000] 4 NWLR (Pt 651) 131 AT 142. This Court, per Ogundare JSC of blessed memory said:

"A long line of cases beginning with KODILINYE VS. MBANEFO OFU [1935] 2 WACA 336 has laid down that in a claim for declaration of title the onus is on the plaintiff to prove his case. He must rely on the strength of his own case and not on the weakness of the defence. See JULES VS. AJANI [1980] 5 – 7 SC 96 except, where the weakness of the defendant's case tends to strengthen plaintiff's case NWAGBOGU VS. IBEZIAKO [1972] Vol. 2 (Pt 1) ECSLR 335, 338 SC or where defendant's case supports his case."

In the instant case, the defendant did not file a counter-claim. He had only come to defend the plaintiff's suit. The result is that a consideration of the weakness of the defence should not be embarked upon. The plaintiff had the primary duty to establish his claims by credible evidence in accordance with his pleadings. (p. 386 C)

Title - Pleadings - Variation

6. It is also settled law that in civil proceedings parties are bound by their pleadings and any evidence which is at variance with the averment in the pleadings goes to no issue and should be disregarded by the Court. In the instant case, the appellant pleaded as per paragraph 3 of the Statement Claim, that the land he jointly purchased with another had "outer buildings erected thereon". While testifying the appellant swore that the land was empty and P.W.2 also said "there was no building at all on the plot when we bought it". The evidence led is clearly inconsistent with the pleading. The appellant also claimed to have fenced the premises with "concrete cement blocks" when the trial court visited the locus, it did not observe any surrounding walls as claimed by the appellant. The sum total of these clearly show that the appellant has failed to prove not only the identity of the land he was claiming decree of declaration of title but has woefully failed to prove his claim of ownership of the disputed land. (p. 386 H)

Title - Possession - Documents

7. On the issue of the documentary exhibits, it was decided in the case of

BAMGBOYE VS. OLUSOGA [1996] 4 NWLR (Pt 444) 520, that where, in a declaration of title to land, a party bases his title on a purchase or grant according to custom by a particular individual as in this case, that party must go further to plead and prove the origin of the title of that particular person. Consequently mere production of a purchase receipt, is not sufficient. In the instant case, the appellant relied on the root, title of his vendor whom he described as the "absolute owner." How the vendor became the absolute owner was neither pleaded nor proved. These documentary exhibits relied upon by the appellant do not amount to proof of title. They could only become relevant when title is proved. Having failed to plead and prove his root of title, the appellant could not fall back and rely on acts of possession. (p. 387 E)

D REPRESENTATION

H. E. WABARA Esq. for the appellant with him are G. N. OKONKWO Esq. and Miss T. OGOLO

C. J. AYABOWEI Esq. for the respondent with him E. ANSLEY-THOMAS Esq.

CASES REFERRED TO

Baruwa v. Ogunshola [1938] 4 WACA 159

F Udofia vs. Afia [1940] 6 WACA 216; Epi vs. Aigbedion [1972] 1 All NLR (Pt. 2) 370

Awote vs. Owudunni (No. 2) [1987] 2 NWLR (Pt. 57)

Makanjuola vs. Balogun [1989] 3 NWLR (Pt. 108) 122

Ogbu vs. Wokoma [2005] 14 NWLR (Pt. 994) 118

G Oladimeji v. Oshode [1968] 1 All NLR 47

RUFIA VS. RIKETT 2 WACA 95. ADOFIN VS. AFIA 6 WACA 216

IORDYE VS. IHYAMBE [2000] 15 NWLR (Pt. 692) 675

NGENE VS. EGBO [2000] 4 NWLR (Pt 651) 131 AT 112

H NWAGBOGU VS. IBEZIAKO [1972] Vol. 2 (Pt 1) ECSLR 335, 338 SC

KODILINYE VS. MBANEFO OFU [1935] 2 WACA 336

OGUNLOYE VS. ONI [1990] 2 NWLR [Pt. 135] 745

KALIO VS. WOLUCHEM [1985] 1 NWLR (Pt. 4) 610 PIARO VS.

TENALO [1976] 13 SC 31

GEORGE AND OTHERS VS. DOMINION FLOOR MILS LTD [1963]
1 ALL, NLR 71 at 77

EMEGOKWUE VS. OKADIGBO [1973] 4 SC 11

ORIZU VS. ANYAEGBUNAM [1978] 5 SC 21.

B

STATUTES REFERRED TO

Rivers State Abandoned Property (Custody and Management) Edict No.
8 of 1969 ss. 4.9 15 & 18(1)(c)

C

LEAD JUDGMENT BY MUSDAPHER JSC

In the High Court of Justice of the Rivers State of Nigeria in the Port
Harcourt Judicial Division, in suit No. PHC/342/88, Benedict Otamna, the
appellant herein, took out the Writ of Summons commencing these
proceedings claiming against Kingdom Youdubagha, the defendant, re-
spondent herein, as follows :-

D

*"(i) A declaration that the plaintiff is by virtue of the Land Use Act
1978 deemed to be the holder of a Statutory right of Occupancy and is
therefore the person entitled to apply for and be granted a Statutory
Certificate of Occupancy under the Act in respect of all that piece of
DEVELOPED LAND forming part of a tract of land formerly known as
ONINGBADA but now known as No. 34 School Road, Mile 3 Diobu Port
Harcourt within the jurisdiction of the Honourable Court.*

F

*(ii) An injunction restraining the defendant whether by himself or
through his servants, agents or privies from trespassing onto the kind or
interfering with the land either by occupying it or letting it out or in any
way holding himself out as the landlord thereof.*

G

*(iii) N100,000.00 [One hundred thousand naira against the defen-
dant being special and general damages for trespass to the said landed
property.*

Particulars and Special Damages

H

*(a) Mesne profits at the Statutory rent of N10.00 [Ten Naira] per
room per month of the 12 rooms in the house from May 1979 to August,
1988 N14,460.00.*

(b) *Mesne profits at N10.00 per room per month plus general damages thereafter until the defendant and his servants, agents or privies vacate the property N85,590.00*

B *Total N100,000.00 “*

Pleadings were ordered, filed, exchanged and amended. At the hearing each of the parties called witnesses who testified in support of their respective pleadings and a number of documents were also tendered through those witnesses. The learned trial judge also visited the locus-in-quo and after the address of counsel and in his judgment delivered on the 19/3/1996, the claims of the plaintiff were dismissed in their entirety. The plaintiff, according to the judgment, “*failed to discharge the burden of proof placed on him*”. One of the fundamental issues the learned trial judge found against the appellant, was the appellant’s failure to prove with certainly the identity of the land he was seeking the decree of declaration of title. The appellant felt unhappy with the turn of events and appealed to the Court of Appeal against the decision. In his brief for the appellant, the learned counsel identified, formulated and submitted “unnecessary proliferated” nine [9] issues for the determination of the appeal. The issues clearly and indisputably which were no more than variants or repetitive of each other, were:-

F *“1. Whether the learned trial judge was right [to have given] given (sic) much weight to the measurement of the land as distinct from the house erected thereon being the subject matter of the plaintiff’s claim.*

G *2. Whether the learned trial judge was right to have used Exhibit “A” for purposes other than the sole purpose for which it was tendered and received in evidence.*

3. Whether the learned trial judge was right to have relied on the purported traditional evidence by Mr. Lazarus Ow'honda [D.W.2] the alleged vendor of the defendant’s father in dismissing plaintiff’s claims.

H *4. Whether the learned trial judge was in not giving any or much weight to the Instrument of Transfer [Exhibit C] and other documents [Exhibits B, D - D4, E9, H and K] emanating from the Rivers State Government, which treated No. 34, School Road, Diobu, Port Harcourt*

– the property in dispute as an ‘Abandoned property’ and confirmed the plaintiff as the owner of the said property.

5. *Whether the learned trial judge was right not to have declared Exhibit J [Defendant’s father’s purported Deed of Conveyance] null and void in view of the clear provisions of the Rivers State Abandoned Property [Custody and Management] Edict 1969 as amended.* B

6. *Whether Exhibit J was not rendered invalid by the numerous inconsistencies in the date of its execution, date of survey plan, recital and other contradictions disclosed on the document.*

7. *Whether the learned trial judge correctly evaluated the evidence tendered by the plaintiff in the case.* C

8. *Whether the plaintiff proved his case and was entitled to all the reliefs claimed by him.*

9. *Whether the learned trial judge was right in dismissing the plaintiff/appellants case in its entirety".* D

The appellant’s appeal at the Court of Appeal was by a split of two to one unsuccessful. IKONGBEH and AKPIROROHJJ.C.A dismissed the appeal while NSOFOR J.C.A. allowed the appellant’s appeal. This is a further appeal to this Court by the plaintiff/appellant. In the briefs filed, exchanged and which at the hearing were adopted by the parties, the appellant identified and submitted the following two issues for the determination of the appeal by this Court:- E

"(1) Whether the lower court was right to have gratuitously raised the issue of identity of the disputed land when the same did not arise from the pleading. [Grounds 1 and 2] F

(2) Whether the appellant established his claim of being entitled to the grant of Statutory Right of Occupancy to the disputed plot as against the respondent." G

The issues formulated and submitted by the respondent through differently worded have more or less the same meaning and intendment. But before the discussion of the issues for determination in this appeal it shall be convenient to firstly of sketch out the facts. H

The appellant’s case is that in 1952, he and one IGNATIUS ONWUSOMBA jointly bought a piece of land with “outer buildings

standing thereon” from the absolute title owner, one MARCUS CHINWO of UMUENYIKA DIOBU, Port Harcourt. The sale was evidenced in writing (Exhibit A.) made by the parties on 26/11/1952. He claimed that his share of the land bought after partition is now plot No. 34 School Road, whereat he erected a structure containing 12 rooms and *“fenced the building with concrete cement blocks.”* He and his family and tenants occupied the building until the outbreak of the Nigerian Civil War when he and his family fled Port Harcourt, being non indigenes, thus rendering the property Abandoned Property. After the Civil War, the appellant returned to Port Harcourt only to find his building occupied by tenants. On investigation, it was revealed to him by one of the tenants, that the respondent as the landlord, had put the tenants in the premises. He approached the respondent who claimed to be the owner of the property, having inherited it from his late father. As the respondent proved recalcitrant the appellant approached the Abandoned Property Authority before which he established his ownership of the disputed property. By an instrument, the Abandoned Authority “released” the property to the appellant and the tenants in the premises were duly informed of the release. The respondent still refused to recognize the appellant as the owner of the property and did not allow him near the property. Meanwhile, in 1975, the Rivers State Government had by Gazette Notice notified the general public about the release to the appellant of the property at PLOT NO. 23 SCHOOL ROAD, DIOBU, Port Harcourt. Believing that the authorities had made a mistake by publishing Plot No. 23 instead of Plot No. 34 as released to him, the appellant approached them and requested a correction to be effected and it was eventually corrected in December 1992, after this suit was filed to read 34 School Road.

The respondent on the other hand stoutly denied the claims of the appellant and his case as outlined in his pleadings was that the plot of land on which the disputed building stands was purchased by his late father in 1950 from the owner called LAZARUS OWHONDA, D.W.2 with whom he entered into an agreement. He traced the history of the land from one ENYIKA, the founder of the land, through OWHONDA family to his father's vendor and to himself. Upon purchasing the land, his father built

the structure on the land in 1951 and lived with his family, until the hostilities of the Nigerian Civil War, when the respondent and his father left Port Harcourt to join the Nigerian Army. After the war they came back to occupy the buildings at No. 34, School Road. He denied that the house was an abandoned property. The respondent also denied the location of the land, its description, the type of building, the number of rooms, the existence “concrete cement fence” and other issues as claimed by the appellant. B

It should also be remembered that the trial Court visited the disputed land with all the parties and their counsel. C

As mentioned above, the learned trial judge, after considering the conflicting claims in the light of the circumstances of the case came to the conclusion that the appellant had failed to discharge the primary onus on him of showing, by satisfactory evidence, that the plot of land he jointly D bought with another, from their vendor in 1952, is the same plot of land on which the disputed building now stands and which the court visited. The Court also found contradictions in the evidence of the appellant and his witnesses and what the court observed at the Locus-in-quo. The Court E also found that in its entirety the evidence did not tally with what the appellant averred in his pleadings. The Court also opined that none of the documents tendered by appellant including those evidencing the release of the property to his control and management create any title in him. Hence F his appeal to the Court of Appeal which as mentioned above was dismissed by a majority of two to one. I shall now consider the issues submitted in this court for the determination of the appeal.

ISSUE NO. 1

Whether the lower court was right to have gratuitously raised the G issue of identity of the disputed land when same did not arise from the pleadings. It is argued that on a calm view of the pleadings and the evidence, there was no dispute as to the identity of the land the appellant claimed to have bought in 1952. There is no dispute that the parties were H contesting the ownership of plot No. 34 School Road, Mile 3, Diobu Port Harcourt. The identity of the land in dispute was never an issue as between the parties. Accordingly the proof of the identity of the land was not an

issue. Learned Counsel referred to the cases of Obulor vs. Oboro [2001] 4 SCNJ 22 at 30; Kyari v. Alkali [2001] 5 SCNJ 421 at 440; Ogunsina vs. Matanmi [2001] 4 SCNJ 89 at 95-96; Odojin v. Oni [2001] 1 SCNJ 130, 145. It is again submitted that both courts were wrong to introduce the issue of identity of the land when it was not based on the pleadings of the parties. See Onyejekwe v. Onyejekwe [1999] 3 SCNJ 63 at 73; Adelaja vs. Alade [1999] 4 SCNJ 225 at 240. It is again added that parties are bound by their pleadings and whatever is not pleaded goes to no issue and is accordingly irrelevant. Nsirim vs. Omuna Construction Company Ltd. [2001] 3 SCNJ 142, 154-155. It is again submitted that Exhibit A was merely put in as a document evidencing a receipt and the use of it in relation to the question of “outer buildings” questioning the identity of the land was wrong when the identity of the land did not arise from the pleadings. See A-G Oyo State v. Fairlakes Hotel [1989] 5 NWLR (Pt.121) 255; Ngwu vs. Nnaji [1991] 5 NWLR (Pt.189) 1818, 30.

The learned counsel for the respondent on the other hand argued, that in a claim of declaration of title or of a statutory right of occupancy to land, the first duty of the plaintiff is to prove with certainty the land or the property to which the declaration relates. Failure to identify or ascertain the property sought will result in the dismissal of the claim. See Odiche v. Chibogwu [1994] 7 NWLR (Pt.354) 78; Agbonifo vs. Aiwereoba [1988] 1 NWLR (pt.70) 325; Olerade vs. Adebara [1994] 6 NWLR (Pt.349) 157. It is submitted that appellant did not discharge the burden of proof in the evidence he tendered; in particular he, did not prove paragraphs 3 and 4 of the Statement of Claim. By his pleadings, the appellant raised the issue of the identity, and certainty of the land and building to which his claim related. He made reference to the location of the land, size and description, the type of building and the existence of the concrete block fence. It is argued that it was on these identifying features that the respondent joined issues with the appellant in his Amended Statement of Defence. It is again submitted that by their pleadings and evidence the parties described two different properties notwithstanding the fact that they all called it “*No. 34 School Road.*” The parties were not agreed on the identity of disputed property as variously described by them. It is accordingly submitted that

the identity of the land is in issue. Learned counsel referred to Overseas Construction Co. [Nig.] Ltd. v. Creek Enterprises [Nig.] Ltd. [1985] 3 NWLR (Pt.13) 407; Imolaome vs. WAEC [1992] 9 NWLR (Pt.265) 303.

It is again submitted that the fact that both parties call the disputed land “34 School Road” is of no moment since that does not make the identity of the land certain and clear. See Idehen vs. Osem [1997] 7 SCNJ 581 at 591. See also Odochie vs. Chibogwu (supra). On the issue of the use of Exhibit “A” made by the trial judge and affirmed by the majority judgment it is submitted to be justified. Learned counsel referred to and relied on Arab v. Ashanlu [1980] 5-7 SC 78; Nwoke vs. Okere [1994] 5 NWLR (Pt.343) 159. It is again submitted that a party cannot rely on one part of a document tendered by him and reject another part of the same document. See Walter vs. Skyll (Nig.) Ltd. [2000] FWLR (Pt.13) 2244.

The law is well settled that in an action for declaration of title to land, the onus is on the plaintiff to establish with certainty the identity of the land in dispute to which his claim relates. The name or etymology of a piece of land is not necessarily indicative of its identity. In a claim for declaration of title to land the first and foremost duty on the claimant is to describe the land in dispute with such reasonable degree of certainty and precision that its identity will no longer be in doubt. In other words the land must be identified positively and without any ambiguity. See Baruwa v. Ogunshola [1938] 4 WACA 159; Udofia vs. Afia [1940] 6 WACA 216; Epi vs. Aigbedion [1972] 1 All NLR (Pt. 2) 370; Awote vs. Owudunni (No. 2) [1987] 2 NWLR (Pt. 57); Makanjuola vs. Balogun [1989] 3 NWLR (Pt. 108) 122. **The mere mention of the name of the land in dispute without stating clearly the area of the land to which the claim relates is not enough description.** See Odiche v. Chibogwu (supra).

Although a plaintiff seeking a declaration of title to land has the primary duty of burden to prove clearly and unequivocally the precise area to which his claim relates, however, the burden will not arise where the identity of the land in dispute does not arise from the pleadings. That is to say where the defendant by his pleadings admitted the description location features and dimension of the

land. In such a circumstance, the identity of the disputed land is not a question in issue and does not require proof. See Ogbu vs. Wokoma [2005] 14 NWLR (Pt.994) 118; Makanjuola v. Balogun (supra). But it must be stressed that in civil matters, the general burden of proof in the sense of establishing his case, is on the plaintiff. A plaintiff claiming a decree of declaration of title to land has the primary duty to succinctly depict the dimensions and the identity of the land, the subject matter of the action. See Oladimeji v. Oshode [1968] 1 All NLR 47; Epi v. Eigbedion (supra). The failure of the plaintiff to identify or ascertain the land, its dimensions, and locality will result in the dismissal of the suit. And order for declaration of title being discretionary cannot be made by any court when the identity of the land is not clearly and unambiguously established.

Now, the appellant as the plaintiff has averred as per paragraphs 3, 4, 5 and 6, the location, identity dimensions, name, features of the land he was seeking a decree of declaration of title. He pleaded that in 1952, he and another jointly bought a piece of land with outer buildings “*standing thereon*” measuring 200ft by 100ft, forming part of a track of land called ONINGBADA situated between mile 2 and 3 Diobu on Owerri-Port Harcourt Road. **It was in evidence that the parties partitioned the land equally between the purchasers and the appellant put up a concrete bungalow of 12 rooms, kitchen line and toilet (bucket system). The appellant also pleaded that he fenced the buildings with concrete cement blocks. In his Statement of Defence the respondent denied all these allegations. It was therefore the bounden duty of the appellant to establish his claims including those relating to identity of the land. Upon a calm view of the pleadings of the parties each of the parties describing a different property notwithstanding that each is referring to the property as 34, School Road, Diobu Mile 3, Port Harcourt. It is manifest from the pleadings and the evidence that the parties disagreed as to the location, name of the land, the type of buildings, the dimensions of the land upon which the buildings were erected, the number of rooms. The existence or non-existence of “*outer buildings*” and the existence or non-existence of**

a concrete cement block round the buildings.

It was perhaps to resolve these conflicts that made the trial judge to visit the locus-in-quo, where the learned trial judge observed the none existence of the “*outer buildings*” and the non-existence of the perimeter wall surrounding the buildings. In my view the learned trial judge was justified in reaching his conclusion that the appellant had failed to establish by credible evidence the identity of the land he was claiming. See RUFIA VS. RIKETT 2 WACA 95; ADOFIN VS. AFIA 6 WACA 216; IORDYE VS. IHYAMBE [2000] 15 NWLR (Pt. 692) 675. As mentioned above, no court will grant a decree of declaration of title to land, or a decree of entitlement to a right of occupancy, or to an injunction over a piece of land whose identity or certainty is not precise and clear see OGBA VS. WOKOMA supra.

As I mentioned above, the mere fact that the parties call the disputed, land “*34 School Road,*” does not make the identity of the land certain or precise or free from ambiguity. See ODICHIE VS. CHIBOGWU supra OLUWI VS. ENIOLA [1967] NMLR 339.

To answer the question posed, the issue of the identity of the land in this case is a live issue raised by the parties in their pleadings and both the trial Court and the Court below were right in deciding the issue. It is also my view, that the appellant had failed to establish by credible evidence the identity of the land he is claiming a decree of declaration of title and his suit was rightly dismissed.

The appellant, having failed to discharge the crucial issue of the identity of the land he is claiming a decree of declaration of title, the issue as raised by the appellant on the use of Exhibit “A” is of no moment. Once the identity of the land is not clear, the case of the appellant is doomed to fail. I accordingly see no need to comment on the question of the use of Exhibit A made by the trial judge. In the end I resolve Issue No. 1 against the appellant.

ISSUE NO. 2

Whether the appellant established his claim of being entitled to the grant of statutory right of occupancy to the disputed plot as against the

respondent.

It is firstly argued that the appellant had established his entitlement to his claim. It is submitted that whether there were out houses or not on the plot as pleaded by the appellant was not sufficient to hold that the appellant had failed to prove the identity of the land. It is not also fatal to the case of the appellant that there was disparity in the evidence led by the appellant and the pleadings with reference to the existence or non existence of the outer buildings” on the disputed land. It is argued that the discrepancy and inconsistency did not materially affect the appellant’s case. Learned Counsel referred to and relied on ADENIRAN VS. ALAO [2000]18 NWLR (Pt 745)361; MAKINDE VS. MAKINDE (2001) 1 SCNJ 101.

It is again argued that though it is the primary duty of a trial court to make a finding of fact upon the evidence, yet an appellate Court can re-evaluate the evidence which in this case is documentary. See ONWUKA VS. EDIALA [1989] 1 NWLR (Pt 96) 182. A-G OF OYO STATE VS. FAIRLAKES HOTELS (supra). It is submitted that the fulcrum point and the central issue revolves on the importance of the documentary exhibits i.e. Exhibit 1A, B, C, D, - D4, E, - E1, F - F40, H, J and K. It is submitted that Exhibit F- F40 are rent receipts issued to the appellant's tenant between 1954 and 1966. These receipts conclusively show that the appellant was the landlord of the premises and was in actual possession before the outbreak of the Civil War.

It is again argued that the plot No. 34, School Road, Mile 3, Diobu, Port Harcourt was an Abandoned Property by virtue of section 2 of the Rivers State Abandoned Property (Custody and Management) Edict No. 8 of 1969 as amended. Learned counsel referred to sections 4 and 9(1) and the Edict and Exhibits G and H and submits that the in-escapable or inevitable conclusion or inference that a reasonable tribunal can draw is that plot No. 34 School Road Diobu, Port Harcourt was an abandoned property as defined by Exhibit C and section 18(1) (c) of the Edict, the property was released to the appellant as the owner with effect from 3rd July, 1975.

It is further argued that Exhibit J, the respondent’s Deed of

Conveyance was null and void vide section 15 of the Edict and the case of IGBONGIDI VS. UMEU [1993] 6 NWLR (Pt. 310) 130.

It is finally submitted that the lower court should have re-evaluated the documentary exhibits tendered by the appellant since the trial court had failed in its primary duty of evaluating the documents and ascribing probative value to them. The failure of the majority justices of the court below to re-evaluate the documentary exhibits has occasioned miscarriage of justice. Learned counsel referred to UMESLE VS. ONUAGULUCHI [1996] 1 NWLR (Pt.75) 89; OGUNIOYE vs. ONI [1990] 2 NWLR (Pt 125) 745; EJABULOR VS. OSHA [1990] 6 NWLR (Pt 148) 1; ATANDA VS. TIJANI (1989)1 NWLR (Pt 111) 511 and MOGAJI VS. ODOFIN [1978] 4 SC 91.

The learned counsel for the respondent on the other hand submit in a claim for declaration of title to land the onus of proof is on the plaintiff, he cannot rely on the weakness of the defendant's case but on the strength of his own case. See OLAKUNLE VS. OMO-BARE [1982] 5 SC 25; IKE VS. UGBOAJA [1993] 6 NWLR (Pt 301) 539.

It is again submitted that the appellant had failed to establish his root of title as pleaded and as such the acts of ownership cannot avail the appellant without first establishing his root of title. See FASORO VS. BEYIOKU [1988] 2 NWLR (Pt 76) 263; OBIOHA VS. DURU [1994] 8 NWLR (Pt.365) 631. It is again argued, in order to prove title, the appellant tendered Exhibit A the purchase receipt. But the description of the land in Exhibit A did not tally with the evidence led by the appellant and his witnesses, and it also, differed from the features found on the land on the visit to the locus by the trial judge. It is submitted, that the appellant had thus woefully failed to prove title to the land in dispute. It is again argued, the appellant pleaded facts to prove the identity of the land such as the existence of the "*outer buildings*", he cannot be heard to say that, it was not necessary for him to plead or prove the same. A party in Civil proceedings is bound by his pleadings.

It is further canvassed that the appellant was wrong to ask this court to i.e evaluate the evidence. See ONWUKA VS. EDIALA Supra.

It is further submitted that as to Exhibits A, B, C, D, - D4, E, E1,

F - F40, G and H tendered by, the appellant and J and K tendered by the respondent, none of the exhibits tendered by the appellant prove title to the appellant as correctly found by the trial court and affirmed by the majority judgment. It is also submitted that these exhibits did not prove that the
B disputed property was an Abandoned Property and the case IGBONGIDI VS. UMELO (Supra) is clearly distinguishable from this case. It is finally argued that discrepancy in the dates of Exhibit J does not in any way help the appellant to prove his case. The weakness of the respondent's case did
C not support the case of the appellant, therefore both the trial court and the majority judgment were right not to have declared Exhibit J as null and void as that would not help the case of the appellant see GANKO VS. UGOCHUKWU [1993] 6 SCNJ (pt.11) 263.

**Now, this issue is concerned with the findings of fact by the
D learned trial judge as affirmed by the majority decision of the Court of Appeal. The gravamen of the complaint of the appellant is the improper or inadequate evaluation of the evidence particularly the documentary evidence and the proper inference to be drawn from
E them.**

Now, In NGENE VS. EGBO [2000] 4 NWLR (Pt 651) 131 AT 142. This Court, per Ogundare JSC of blessed memory said:
*"A long line of cases beginning with KODILINYE VS. MBANEFO
F OFU [1935] 2 WACA 336 has laid down that in a claim for declaration of title the onus is on the plaintiff to prove his case. He must rely on the strength of his own case and not on the weakness of the defence. See JULES VS. AJANI [1980] 5 – 7 SC 96 except, where the weakness of the defendant's case tends to strengthen plaintiffs case NWAGBOGU VS.
G IBEZIAKO [1972] Vol. 2 (Pt 1) ECSLR 335, 338 SC or where defendant's case supports his case."*

**In the instant case, the defendant did not file a counter-claim. He had only come to defend the plaintiff's suit. The result is that a
H consideration of the weakness of the defence should not be embarked upon. The plaintiff had the primary duty to establish his claims by credible evidence in accordance with his pleadings.**

It is also settled law that in civil proceedings parties are bound

by their pleadings and any evidence which is at variance with the averment in the pleadings goes to no issue and should be disregarded by the Court. See *GEORGE AND OTHERS VS. DOMINION FLOOR MILLS LTD* [1963] 1 ALL, NLR 71 at 77; *EMEGOKWUE VS. OKADIGBO* [1973] 4 SC 113; *ORIZU VS. ANYAEGBUNAM* [1978] 5 SC 21. In the instant case, the appellant pleaded as per paragraph 3 of the Statement Claim, that the land he jointly purchased with another had “outer buildings erected thereon”. While testifying the appellant swore that the land was empty and P.W.2 also said “there was no building at all on the plot when we bought it”. The evidence led is clearly inconsistent with the pleading. The appellant also claimed to have fenced the premises with “concrete cement blocks” when the trial court visited the locus, it did not observe any surrounding walls as claimed by the appellant. The sum total of these clearly show that the appellant has failed to prove not only the identity of the land he was claiming decree of declaration of title but has woefully failed to prove his claim of ownership of the disputed land.

On the issue of the documentary exhibits, it was decided in the case of *BAMGBOYE VS. OLUSOGA* [1996] 4 NWLR (Pt 444) 520, that where, in a declaration of title to land, a party bases his title on a purchase or grant according to custom by a particular individual as in this case, that party must go further to plead and prove the origin of the title of that particular person. Consequently mere production of a purchase receipt, is not sufficient see *OGUNLOYE VS. ONI* [1990] 2 NWLR [Pt. 135] 745; *KALIO VS. WOLUCHEM* [1985] 1 NWLR (Pt. 4) 610; *PIARO VS. TENALO* [1976] 13 SC 31. In the instant case, the appellant relied on the root, title of his vendor whom he described as the “absolute owner”. How the vendor became the absolute owner was neither pleaded nor proved. These documentary exhibits relied upon by the appellant do not amount to proof of title. They could only become relevant when title is proved. Having failed to plead and prove his root of title, the appellant could not fall back and rely on acts of possession. See *FASARO VS. BEYBIOKU* supra.

The finding by the trial judge which was affirmed by the majority decision of the Court of Appeal was based on the facts. This is a concurrent findings of facts. The appellant has not shown that the finding is perverse or not based upon a proper appraisal and evaluation of the evidence. I accordingly resolve Issue No. 2 against the appellant. In the result this appeal fails and is dismissed by me. I award the respondent N10,000.00 costs against the appellant.

C KUTIGI JSC

I have had the privilege of reading before now the judgment just delivered by my learned brother Musdapher, JSC. I agree with his reasoning and conclusions. The duty of a litigant in a land dispute to prove beyond doubt the identity of the land in dispute cannot be overstressed (see for example *BARUWA VS OGUNSHOLA* 4 WACA 159; *EPI VS AIGBEDION* (1972) 1 All NLR (PT.2) 370; *AWOTE VS OWODUNMI* (No.2) (1987) 2 NWLR (PT.57) 367; *MAKANJUOLA VS BALOGUN* (1989) 3 NWLR (PT.108) 122).

The Plaintiff/Appellant having failed to prove the identity of the land he claimed is doomed to failure as found by both the trial High Court and the Court of Appeal.

The appeal must therefore fail. I dismiss it with costs as assessed.

KALGOJSC

I have had the privilege of reading in advance the judgment of my learned brother Musdapher JSC just delivered. I entirely agree with him that there is no merit in the appeal and it ought to be dismissed. I accordingly dismiss it and abide by the order of costs made in the said judgment.

MUKHTAR.JSC

I have had a preview of the judgment delivered by my learned

brother Musdapher JSC.

The issues formulated by the appellant in this appeal are predicated on identity of the land in dispute and proof of the claim by the plaintiff/appellant. The issues as formulated in the appellant's brief of argument are:

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(1) Whether the lower court was right to have gratuitously raised the issue of identity of the disputed land when the same did not arise from the pleadings. B

(2) Whether the appellant established his claim of being entitled to the grant of statutory right of occupancy to the disputed plot as against the respondent. C

The issues raised in the Respondent's brief are virtually the same as above. The issue of identity of land in a case for declaration of title to land is certainly important and fundamental for the determination of title to land. It is the argument of learned counsel for the appellant that the identity of the land in dispute never arose, and so it was wrong for the court of appeal to have raised it. At the juncture it is pertinent that I peruse the pleadings. In the amended statement of claim of the plaintiff/appellant can be seen the averments below: - D E

"4. The land measuring some 200ft x 100ft forms part of a tract of land then locally called Onumgbada situate between mile 2 and mile 3 Diobu on Owerri/Port Harcourt Road.

5. The land was later partitioned between the co-purchaser, the said I. Onwuasomba and the plaintiff. F

6. The plaintiff thereafter fully built up his own portion of the land with a concrete bungalow of 12 (twelve) rooms. Kitchen line and toilet (bucket system) and fenced the building with concrete cement blocks. G

7. The built up premises later came to be known as No. 34 School (alias Osuachara) Road Mile 3 Diobu Port Harcourt.

10. The plaintiff's son in 1963 planted a coconut tree on the land, the slump of the tree of which is still standing thereon." H

The defendant respondent's paragraph (8) of statement of defence reads :-

"8. The defendant admits paragraph 10 of the statement of claim

to the extent that there is a coconut tree just outside the premises, he denies the averment that the plaintiff's son planted the coconut tree in further answer to the said paragraph, the defendant avers that the coconut tree was planted by his father and that his family had been enjoying it without let or hindrance but that the coconut tree was struck dead by thunder sometime in 1978 but the remaining is still standing."

It is my firm belief that the issue of the identity of the land in dispute was raised right from the on set of the case. Indeed there was evidence to that effect, which the learned trial judge evaluated and found on thus :-

"Instead of proving a plot of 100ft x 100ft the uncontroversial evidence at the locus is that it is even less than half of what the plaintiff claims. In fact the facts as seen during the visit to the locus is that the dimensions are more consistent with the case of the defendant. Apart from the plan attached to Exhibit 'J' but the D.W.2 and D.W.3 said the land was less than a plot of 100ft by 50ft. In the face of the pleadings of this case the plaintiff must, in order to succeed, prove the property No. 34 School Road that is 100ft x 100ft or at least something close to it. I can find no basis for holding that the No. 34 School Road which is less than a plot of 100ft x 50ft is one and the same as that of 100ft x 100ft claimed by the plaintiff."

The learned trial judge was right in evaluating the evidence and finding as he did above, and so the lower court did not gratuitously raise the issue of identity of the disputed land, as argued by learned counsel for the appellant. It is settled law that a party in a claim for the relief in this suit i.e. declaration of title to land must in order to succeed prove identity of the land to which it is claiming title with certainty and see *Baruwa v. Ogunshola* 1993 W.A.C.A. 159; *Onwuka v. Ediala* 1989 1 N.W.L.R. part 96, page 182; *Udeze v. Chidebe* 1990 1 N.W.L.R. part 125 page 11, and *Imah v. Okogbe* 1993 9 N.W.L.R. part 316 page 159.

In view of the foregoing discussion, with the fuller reasoning in the lead judgment, I am in full agreement with my learned brother that the appeal lacks merit, and should be dismissed. I also dismiss the appeal, and abide by the consequential orders made in the lead judgment.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my learned brother MUSDAPHER J.S.C just delivered. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed. B

The primary issue in this appeal has to do with the identity of the land in dispute between the parties and whether appellant proved title to that land. Appellant claimed “*a declaration that the plaintiff is by virtue of the Land Use Act 1978 deemed to be the holder of statutory right of occupancy and is therefore the person entitled to apply for and be granted a statutory certificate of occupancy under the Act in respect of all that piece of DEVELOPED land forming part of a tract of land formerly known as ONIGBADA but now known as No. 34 School Road, mile 3. Diobu Port Harcourt.*” C D

It is trite that in an action for declaration of title or Statutory right of occupancy to land, the first duty for the plaintiff is to prove, with certainty, the land or property to which his claim relates. When that is done, the parties and the court will not be in doubt as to the identity or certainty of the property in dispute and over which the parties lay claim. Where the plaintiff fails to identify or ascertain the property in issue, his claim must be dismissed - see *Odice vs. Chibogwu* (1994) 7 NWLR (pt. 354) 81 at 89 - 90; *Agbomfo vs. Aiwereoba* (1988) 1 NWLR (pt.70) 325; *Olerade vs. Adebara* (1994) 6 NWLR (pt.349) 157 at 185 -186. E F

What then are the features on the land which appellant claim to be his as pleaded and given in evidence.

In paragraph 3 of the Statement of claim appellant claimed that in 1952 he and one Ignatius Onwuasomba bought a piece of land with the outer buildings thereon, and that the sale was documented. In paragraph 4 thereof appellant gave the dimension of the land they purchased to be 200ft X 100ft, and the location as being at ONIGBADA between mile 2 and mile 3, Diobu on Owerri Port Harcourt Road. G H

Paragraphs 5 and 6 averred that the land was later partitioned between the purchasers and that he fully built up his own portion with a concrete bungalow of 12 rooms, kitchen line and toilet and fenced in the

buildings with concrete cement blocks. In paragraph 10 appellant claimed that his son planted a coconut tree on the land which is still standing.

It is clear from the pleadings of appellant that the issue of identity and certainty of the land and building to which his claim relates and the location, size, type of building, concrete fence and coconut tree, is, raised particularly when the respondent denied the averments in paragraph 71 (a) - 71 (c) of the amended statement of defence thereby joining issues with appellant. It is therefore my considered view that learned counsel for the appellant is under a misconception when he submitted in the appellant brief that there was no dispute as to the identity of plot 34 School Road, Mile 3 Diobu, Port Harcourt. It is the law that every disputed question of fact is an issue for trial though in every case, there is always the primary and crucial issue which, if determined in favour of a plaintiff, will give him a right to the relief claimed - see *Imoloame vs. W.A.W.E.C* (1992) 9 NWLR (pt.265) 303.

It is very clear in the present case on appeal that the identity of the land claimed by the appellant was not established before the trial court. It is also evident from the record that appellant's claim would appear to relate to a piece of land different from the one claimed by the respondent even though both call the building or plot in dispute No. 34 . School Road, Mile 3 Diobu, Port Harcourt.

In the circumstances I hold the view that the lower court is right when it held thus: -

"We have seen that the judge detected an irreconcilable difference in description of the land allegedly brought as given in the appellants evidence and in Exhibit A. Were there buildings on it or were there not when it was bought. The appellant did not provide any satisfactory answer, instead he created confusion. Through his own mouth came forth the fact that the land he bought was empty. From his hand, however came Exhibit A, which testified in silent yet eloquent voice that the land that it witnessed as having been sold and, bought has out buildings on it at the time. When the court visited the plot in dispute it did not see any outbuildings and the appellant could not show it anything to suggest that there ever had been any. Yet Exhibit A, declared in unequivocal terms that the land was sold

with out buildings erected or standing on the said land" - see pages 250-251 of record.

Another point working against the appellant on identity of the land has to do with the alleged existence of concrete fence demarcating the land in dispute which the learned trial judge found not to have ever existed upon a visit to the locus-in-quo. The findings of the trial judge were affirmed by the Lower Court thus making the findings concurrent. That places much more burden on the appellant, if he is to succeed in this appeal. B

It is trite law that where there are concurrent findings of facts, the Supreme Court will not interfere with such findings where the said findings are reasonably justified and supported by evidence, and where no special circumstances why the supreme Court should interfere with the findings is shown or where there is no substantial error apparent on the record of proceedings, such as miscarriage of justice or violation of some principles of law or procedure. On the other hand where it is demonstrated by the appellant that the findings are perverse or patently erroneous or where, for instance the court has drawn wrong conclusions from accepted credible evidence adduced before it and a miscarriage will result if they are allowed to remain, the Supreme Court has a duty to interfere with such concurrent findings of facts. In the instant appeal I had held that both the trial and Lower Courts are right in making the findings which thereby threw the burden of establishing the existence of the conditions necessary for this court to interfere with such findings on the appellant which he has failed to discharge. He has not established that the confirmation of the findings by the lower court has resulted in a miscarriage of justice, neither are the findings demonstrated to be perverse - see Amadi vs. Orisakwe (2005) 7 NWLR (pt. 924) 385. D E F G

It is my considered view that appellant having failed to establish the identity of the land to which his claim of ownership or title relates, whatever evidence whether oral or documentary, he produced at the trial cannot, in law, ground a declaration of title in his favour. So where there is dispute as to the identity of land in dispute as in the instance case, the plaintiff has the duty of first establishing with certainty, the identity of the land otherwise he must fail. H

In conclusion I too dismiss the appeal for lacking in merit and abide by the consequential orders contained in the said lead judgment by learned brother MUSDAPHER JSC including the order as to costs.

Appeal dismissed.

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