

SUPREME COURT OF NIGERIA

13TH JULY, 2007. SC.418/2001

**CORAM:- N. TOBI, D. MUSDAPHER, W. S. N. ONNOGHEN,
F. F. TABAI, P. O. ADEREMI, JJSC**

LASISI AREMU APPELLANT
(Substituted for BURAIMOH OGUNLEYE)

AND

ALHAJI LAWAL ADETORO RESPONDENT

LAND LAW - Title - Proof - Identity of land in dispute - Burden is on plaintiff - To give specific evidence as to the boundaries (H1)

LAND LAW - Identity of the land -Test for establishment of - Importance of survey plan - Failure to tender pleaded survey plan - Court can invoke s. 149 (d) Evidence Act (H2)

LAND LAW - Pleadings - Surprise - Location of land in dispute - Evidence of - That is at variance with pleadings - Goes to no issue (H3)

LAND LAW - Title - Proof - Appeals - Where plaintiff did not prove his case - Court of Appeal rightly reversed trial court's judgment - That was given in his favour (H4)

FACTS

This is an appeal against the judgment of the Court of Appeal, Ibadan division, delivered on 6/3/2000. The lower court reversed the trial court's judgment of 31/5/1991 in suit No. HOS /12/86 delivered in plaintiff's favour. The plaintiff/appellant in the suit claimed against defendant/respondent declaration to a statutory right of occupancy, N500.00 damages for trespass and perpetual injunction in respect of the land in dispute situate at Ofatedo. Appellant stated that his grandfather was granted a parcel of land by Oba Atoloye about 100 years ago. The Oba came into possession and ownership through a grant by one Oshungbekun.

Ofatedo and some other districts around there were administered by Ibadan. Appellants and other family members who inherited the land planted economic crops until 1985, when respondents entered the land. Appellant filed this action in a representative capacity.

Respondent told a different story as to how he bought the land in 1976 from Oba Laoye who acquired the land about 200 years ago by conquest. The appellant's case was full of contradictions as to the boundaries of the land, and he did not tender the survey plan that was pleaded by him. The trial court found in appellant's favour. Respondent's appeal to the Court of Appeal was allowed. Dissatisfied, appellant has now appealed to the Supreme Court.

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

LAND LAW - Title - Proof

1. Let me begin or start first from very familiar principle of law and it is on the burden of proof. In land matters, the burden is on the plaintiff who pleads title to prove that title. This is consistent with the burden of proof in our adjectival law as contained or provided for in the Evidence Act. See sections 137 and 139 of the Evidence Act.

Flowing from the above general principle of law is that where the parties are not *ad idem* or *ad idem facit* on the identity of the land in dispute, the burden is on the party claiming title to prove the identity of the land. And this he can do by specific and unequivocal evidence as to boundaries of the land in dispute. In *Odesanya v. Ewedemi (1962) 1 All NLR 320*, the Federal Supreme Court held that in a claim 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. And that defined area, in my humble view, is the boundary of the land. The burden of proof of the identity of the land does not shift one inch. It is totally on the plaintiff. (p. 3170 A/ H)

Identity of the land -Test for establishment of

2. The test for the establishment of the identity of land is whether a surveyor can, from the record, produce an accurate plan of such land. While it is the law that a plan is not in all cases a *sine qua non*, some

description is necessary to make a disputed land ascertainable. Where a plaintiff pleads a survey plan, he must tender the plan at the trial. Where he fails to do so, the court is entitled to invoke section 149(d) of the Evidence Act. I will return to this.

Although the survey plan was averred to in paragraph 5 of the Amended Statement of Claim, it was not tendered in evidence. Why? As I said earlier in this judgment, this is a case where a court of law can invoke section 149(d) of the Evidence Act “*that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.*”

The position of the law is that survey plan is not necessary where the identity of the land is not in dispute or there is cogent evidence of the identity of the land. But where the identity of the land is in dispute, such as in this case, and there is no cogent evidence on the identity of the land, the appellant ought to have tendered the survey plan averred to in paragraph 5 of the Amended Statement of Claim. (p. 3171 A/ 3175 C)

Pleadings - Surprise - Location of land in dispute

3. PW6, Alhaji Karimu Olawale, averred to in paragraph 3 of the Amended Statement of Claim, said in evidence that the land in dispute is “*between Iddo-Oshun and Ofetedo.*” He also said that the river called Odo-Obedu is between the plaintiff’s family land in dispute and his own family land. As there is no such averment in paragraph 3 of the Amended Statement of Claim, the evidence of PW6 goes to no issue. It is elementary law that parties are bound by their pleadings and facts not pleaded go to no issue. This principle of law is to ensure that the adverse party does not spring any surprise at the trial by giving evidence on what was not pleaded. (p. 3174 F)

Title - Proof - Appeals

4. The Court of Appeal, in my humble view, properly analysed the case of the parties. It is clear from what I have said that the appellant as plaintiff did not prove his case and the learned trial Judge was clearly in error in giving him judgment. The Court of Appeal was therefore correct when the

Court said in the final paragraph of its judgment at page 140 of the Record:

“In a case of declaration of title to land a Plaintiff is required to prove his case with cogent, convincing and satisfactory evidence and once he has satisfied these requirements the court is bound to exercise its discretion in his favour, and grant the reliefs sought. I have doubt in my mind that the Respondent in his case discharged the burden placed on him by the law.”

I entirely agree with the Court of Appeal. This appeal has no merit and it is therefore dismissed. (p. 3175 G)

NOTABLE POINT OF INTEREST

ADEREMIJC

1. Ascription of different names to land in dispute

I also observe that the parties tried to give different names to the land disputed upon in this case. Let me say that the ascription of different names by the parties to a disputed land, even with alarming degree of imprecision, may not necessarily be detrimental to a party’s case. What is of utmost importance and indeed, the emphasis in a case of this nature is that the parties must be ad idem on the same area of land that is being given different names for various reasons. In the instant case, it is very clear that the evidence led by the witnesses called by the plaintiff/appellant is totally lacking in descriptive value of the land litigated upon. (p. 3182 G)

REPRESENTATION

Appellant not represented.

N. O. O. Oke (SAN) with him A. O. Olariaje for respondent.

CASES REFERRED TO

GB Ollivant Ltd. v. Kersah (1941) 7 WACA 188
Oladeinde v. Oduwale (1963) WNLR 41
Udegbe v. Nwokafor (1963) 1 All NLR 417
Mogaji v. Odofin (1978) 4 SC 91
Onuwaje v. Ogbeide (1991) 3 NWLR (Pt. 178) 147
Chief Udo v. Chief Okupa (1991) 5 NWLR (Pt. 191) 365

United Bank of Africa Ltd. v. Ibhafidon (1994) 1 NWLR (Pt. 318) 90
Ogwuru v. Cooperative Bank of Eastern Nigeria Ltd. (1994) 8 NWLR (Pt 365) 685

Kyan v. Alkali (2001) 11 NWLR (pt. 724) 412

Odefeso v. Coker (1999) 1 NWLR (pt. 588) 65

B

Makanjuola v. Ogunshola 4 WACA 159

Udofia v. Afia 6 WACA 216 at 217

Olusanmi v. Oshasona (1992) 6 N.M.L.R. (pt.245) 22

Olusanmi v. Oshasona (1992) 6 N.M.L.R. (pt.245) 22

C

Ayinla v. Adisa (1992) 7 N.W.L.R. (pt.255) 566

STATUTES REFERRED TO

Criminal Code s. 319(1)

Constitution of Nigeria 1979 s. 33(6) (a) & (e)

D

Criminal Procedure Law s. 215

Evidence Act, Cap 112 LFN 1990 s. 27(1) & (2)

LEAD JUDGMENT BY TOBI JSC

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This is an appeal against the judgment of the Court of Appeal in respect of title to land lying between Obedu Stream and Iya-Oba Stream in Ofatedo. The appellant is asking for a statutory right of occupancy. At the High Court, the learned trial Judge gave judgment to the appellant as plaintiff. The Court of Appeal upturned the judgment and allowed the appeal of the respondent who was the defendant in the High Court. F

The case of the appellant as narrated by the learned trial Judge is as follows: The appellant's grandfather, Ogunyemi, was granted a parcel of land by Oba Atoloye, the first Olafa of Ofatedo about 100 years ago. Oba Atoloye came into the possession and ownership of the parcel of land through a grant by one Balogun Oshungbekun of Ibadan about two hundred years ago. At the time of the grant by Balogun Oshungbekun, Ofatedo and some other districts around there were administered by Ibadan. The appellant's grandfather was succeeded by his father, Ogunyemi. The appellant and his other members of the family inherited the land. They planted economic crops such as cocoa, kolanuts on the G H

land in dispute until 1985 when the respondent entered the land. The entry resulted in the action filed by the appellant in a representative capacity.

The case of the respondent is different. It is as follows: The land in dispute was bought from the owner, Oba Laoye, the late Timi of Ede sometime in 1976. The late Timi of Ede acquired the land by conquest about 200 years ago. Possession of the land was delivered to the respondent in the presence of three other people he called as witnesses. The respondent also pleaded the doctrine of *res judicata* based on the fact that the land in dispute is part of a larger parcel of land over which there was a litigation originated in the High Court in 1964 between Timi of Ede, Oba Laoye and Oba Bello Oyewusi of Idoo-Oshun.

The appellant called five witnesses. The respondent called four witnesses. The learned trial Judge gave judgment to the appellant. An appeal to the Court of Appeal succeeded. The appellant has come to this court.

Briefs were filed and duly exchanged. The appellant formulated the following issues for determination:

“(i) *Whether the Court of Appeal properly set aside the trial High Court’s judgment.*

“(ii) *Whether the Court of Appeal properly analysed the parties’ case.*”

The respondent formulated the following issue for determination:

“*Whether the Court of Appeal was right in setting aside the judgment of the trial court on the ground that the Appellant’s case on the ground of the identity of the land in dispute is not made.*”

Learned counsel for the appellant, Prince J. O. Ijaodola submitted on Issue No. 1 that the decision of the Court of Appeal was perverse on the ground that the Court of Appeal could not lawfully reverse the findings of fact based on credibility of evidence by the High Court. He cited *Kponuglo v. Agboola (1974) 1 All NLR (Pt. 2) 66; Egiri v. Uperi (1974) 1 NMLR 22; Bakare v. The State (1987) 3 SCNJ 1 at 5 and Awosu v. BOCE (1988) 12 SCNJ 313.*

Learned counsel submitted on Issue No 2 that the Court of Appeal

misdirected itself in holding that the respondent in the appeal traced his title to his own land at Ido-Oshun Osogbo, Edo to Timi Ajeju who acquired the land by conquest about 200 years ago. Learned counsel contended that it was the appellant at the Court of Appeal, Alhaji Lawal Adetoro, who traced his root of title to Timi Ajeju and not the plaintiff/respondent in that court. B He submitted that the misdirection has occasioned substantial injustice in that it obscured the vision of the learned Justices of the Court of Appeal which led them to set aside the laudable findings of fact by the learned trial Judge wrongly. He urged the court to allow the appeal.

Learned Senior Advocate for the respondent, Mr. N. O. O. Oke, C submitted on the only issue raised that the identity of the land was in issue and the appellant failed to prove it. He referred to paragraphs 3 to 6 of the Amended Statement of Claim, the evidence of PW1, PW2, PW4, PW5 and PW6 and asked rhetorically at page 5 of his brief: “which parcel of land D was the appellant and his witnesses talking about for consideration as the subject matter of dispute between the Appellant and the Respondent?” He called the attention of the court to the fact that although the survey plan was duly pleaded in paragraph 5 of the Amended Statement of Claim, it was E never tendered.

Learned counsel also pointed out that the appellant did not attack the judgment of the Court of Appeal on the ground upon which the respondent’s appeal before it was allowed principally on the identity of the land on which F the declaration was sought. Accordingly, he cannot be heard on appeal to question that finding. He cited *Yesufu v. Kupper International NV* (1996) 5 NWLR (Pt. 446) 17; *Eholo v. Ekhotor* (1996) 2 NWLR (Pt. 430) 338; *NBCI v. Integrated Gas Nig. Ltd.* (2005) 4 NWLR (Pt. 916) 617; *Ijale v. Leventis and Co. Ltd.* (1959) SCNLR 255 and *Dabup v. Kolo* (1993) 9 G NWLRT (Pt. 317) 254. He urged the court to dismiss the appeal.

Learned counsel for the appellant, in his reply brief, referred to the evidence of DW5 and submitted that the issue of non-certainty of the land in dispute is a non-issue and superfluous. He submitted that as the land in H dispute was well known to both parties, the issue raised by the respondent on the identity of the land did not arise. He cited *Araba Ogunbiyi* (1980) 5-7 SC 78.

Let me begin or start first from very familiar principle of law and it is on the burden of proof. In land matters, the burden is on the plaintiff who pleads title to prove that title. See *GB Ollivant Ltd. v. Kersah* (1941) 7 WACA 188; *Oladeinde v. Oduwale* (1963) WNLR 41; *Udegbe v. Nwokafor* (1963) 1 All NLR 417; *Mogaji v. Odofin* (1978) 4 SC 91; *Bello v. Eweke* (1981) 1 SC 101 and *Onobruchere v. Esegine* (1986) 1 NWLR (Pt. 19) 799. **This is consistent with the burden of proof in our adjectival law as contained or provided for in the Evidence Act. See sections 137 and 139 of the Evidence Act.** See also *Elias v. Disu* (1962) 1 All NLR 214; *Abiodun v. Adehin* (1962) 1 All NLR 550; *Okechukwu and Sons v. Ndah* (1967) NMLR 368; *Frempong II v. Brempona II* (1952) 14 WACA 13.

Flowing from the above general principle of law is that where the parties are not *ad idem* or *ad idem facit* on the identity of the land in dispute, the burden is on the party claiming title to prove the identity of the land. And this he can do by specific and unequivocal evidence as to boundaries of the land in dispute. In *Odesanya v. Ewedemi* (1962) 1 All NLR 320, the Federal Supreme Court held that in a claim 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. And that defined area, in my humble view, is the boundary of the land. In *Omoregie v. Idugiemwanye* (1985) 2 NWLR (Pt. 5) 41, this court held as follows:

(1) In an action for declaration of title, it is the duty of the plaintiff to show quite clearly the area of land to which his claim relates.

(2) One of the ways of showing the specific area claimed is to file a plan of the area; such plan being properly orientated, drawn to scale and accurate and reflecting the boundary features.

(3) A court will not grant a decree of declaration of title in respect of an undefined area.

See also *Odiche v. Chibogwu* (1994) 7 NWLR (Pt. 354) 78; *Umesie v. Onuaguluchi* (1995) 9 NWLR (Pt. 421) 515; *Nnadozie v. Omesu* (1996) 5 NWLR (Pt. 446) 116 and *Ijade v. Ogunyemi* (1996) 9 NWLR (Pt. 470) 17. **The burden of proof of the identity of the land does not shift one**

inch. It is totally on the plaintiff.

The test for the establishment of the identity of land is whether a surveyor can, from the record, produce an accurate plan of such land. While it is the law that a plan is not in all cases a *sine qua non*, some description is necessary to make a disputed land ascertainable. See *Awere v. Lasoju* (1975) NMLR 100; *Akpagbue v. Ogu* (1976) 6 SC 63; *Ezeudu v. Obiagwu* (1986) 2 NWLR (Pt. 21) 208; *Idehen v. Osemwenkhae* (1997) 10 NWLR (Pt. 525) 358. **Where a plaintiff pleads a survey plan, he must tender the plan at the trial. Where he fails to do so, the court is entitled to invoke section 149(d) of the Evidence Act. I will return to this.**

With the above position of the law, I should go to the factual position. Paragraphs 3, 4 and 5 of the Amended Statement of Claim aver to the identity of the land:

“3. That the Plaintiff avers that the land in dispute is situate, lying and being at between Obedu Stream and Iyana-Oba Stream in Ofatedo.

4. The land in dispute is bounded as follows:- On the first side by Joseph Aremu’s land, on the second side by Buraimoh Dunmoye’s land, on the third side by Alhaji Oseni Olaniyonu’s land and on the fourth side by Karimu Olawale’s land.

5. The Plaintiffs family has caused the land in dispute to be surveyed and Survey Plan No. FOY/385/85 of 10/6/85 was produced.”

In paragraph 4 of the Amended Statement of Defence, the respondent averred:

“The Defendant avers with reference to paragraphs 2, 3, 4 and 5 of the Plaintiff’s Amended Statement of Claim that the defendant does not know the land in dispute as claimed by the Plaintiff but further avers his own parcel of land is situate, lying and being along Ido-Osun, Osogbo Road, Ede.”

By the above, the parties joined issues on the identity of the land in dispute. The burden is therefore on the appellant to prove the identity of the land. Did he prove the above paragraphs of the Amended Statement of Claim?

PW1 in his evidence in-chief at page 42 of the Record said:

"There is a foot path used by the school children that forms the boundary between the land in dispute and Olaniyan's farmland. Odo Iya Oba (stream) is also another physical feature forming boundary between the land in dispute and Buraimoh's farmland. I don't know the other physical features that form the other boundaries."

PW2 said at page 43 of the Record:

"I know the land in dispute. It is between the streams of Odo-Oba and Obedu in Balogun's Compound, Ofatedo. I know the owners of the boundary farmlands to this land in dispute. They are: (1) Joseph Aremu, (2) Karimu Olawale, (3) Buraimoh Dunmoye and (4) Oseni Olaniyan."

Under cross-examination, witness said at page 44 of the Record:

"The land in dispute is not within Balogun's compound but by the side of Ofatedo Township. There are features forming boundary between our land and that of Joseph Aremu. We have plantains and pine-apples are those crops that are used to demarcate the two farmlands."

PW3, Joseph Aremu, who featured in the evidence of PW2, said at page 46 of the Record:

"The land in dispute is situated at between Odo-Iya Oba and another stream which name I don't remember now. My own farmland forms boundary with the family land of the plaintiff in dispute. The physical feature forming our boundary is Araba tree."

PW4 said at page 48 of the Record:

"I know the land in dispute. It is within Odo-Oba and Odo Obedu."

Witness said under cross-examination at page 48 of the Record:

"I know that there are natural features forming boundary between our family land and another. There is no such feature between the Plaintiff's family and ours."

PW5 said under cross-examination at page 50 of the Record:

"The features forming boundary line between Joseph Aremu's family land and the Plaintiff's land in dispute are kolanut trees and cocoa trees. Between Buraimoh Dunmoye's family land and the Plaintiff's family land are kolanut trees and cocoa trees as demarcating features. Between Karimu Olawale's family land and the Plaintiff's family land there are cocoa and kolanut trees forming boundary features. The

Plaintiff's family land is about a mile square."

PW6 said at page 51 of the Record:

"There is a river called Odo-Obedu which is in between the Plaintiffs family land in dispute and my own family land. The land in dispute is between Iddo-Oshun and Ofatedo."

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Witness said under cross-examination at page 52 of the Record:

"The features that form boundary between the plaintiff's family land and our land are cocoa, kolanut and lapalapa trees."

It is in the light of the above evidence that learned counsel for the respondent asked,

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"which parcel of land was the appellant and his witnesses talking about for consideration as the subject matter of dispute between the appellant and the respondent?"

The question is germane and relevant because of the contradictions in the evidence of the witnesses. Certainly, they cannot be talking about the same land, giving different versions of the contents and geography surrounding the land in dispute.

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The base-line or reference point is the pleading of the appellant; the relevant portions of which I have set out above. They are paragraphs 3, 4 and 5 of the Amended Statement of Claim. It is averred in paragraph 3 that the land in dispute is situate between Obedin Stream and Iya-Oba Stream in Ofatedo. Paragraph 4 averred to the boundaries "on the first side by Joseph Aremu's land, on the second side by Buraimoh Dunmoye's land, on the third side by Alhaji Oseni Olaniyan's land and on the fourth side by Karimu Olawale's land.

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Joseph Aremu did not remember the name of one of the streams and it is the Obedu stream. This is strange to me. How can a very important witness on boundary forget the name of a stream in a case he appears to give evidence? By his evidence, the witness did not prove paragraph 3 of the Amended Statement of Claim.

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PW2 was Buraimoh Ogungbile. PW2 gave contradictory evidence. He said in examination in-chief that the land in dispute is between the streams of Odo-Oba and Obedu in Balogun's Compound; he gave contrary evidence under cross-examination. He said under cross-examination that

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the land in dispute is not within Balogun's Compound. Which is the evidence to believe? Unfortunately, a court of law cannot pick and choose one aspect of evidence and throw away the other in the circumstances of the evidence of PW2.

B PW4 was Buraimoh Dunmoye, averred to in paragraph 3 of the Amended Statement of Claim. He said in examination in-chief that the land in dispute "*is within Odo-Oba and Odo-Obedu*". The evidence did not vindicate paragraph 3 of the Amended Statement of Claim which averred that the land "*is situate, lying and being at between Obedu stream and Iya-Oba stream in Ofatedo.*" Even if one is prepared to say that the "Odo-Obedu" version of the witness is the same as "Obedu" (a fairly dangerous conclusion in the absence of evidence), it is difficult to come to the conclusion that the "Odo-Oba" version of the witness is the same as Iya-
C Oba
D Oba in paragraph 3 of the Amended Statement of Claim.

PW5, Oseni Olaniyan, averred to in paragraph 3 of the Amended Statement of Claim, said under cross-examination that "*the features forming boundary line between Joseph Aremu's family land and the
E plaintiff's land in dispute are kolanut trees and cocoa trees. That evidence contradicts the evidence of PW3, Joseph Aremu, who shares common boundary with the appellant, in the language of paragraph 3 of the Amended Statement of Claim, "on the first side.*" He said in his evidence
F that the physical feature forming the boundary is Araba tree. Although my knowledge of botany is very poor, it is not my understanding that Araba tree is the same as kolanut tree and cocoa tree.

**PW6, Alhaji Karimu Olawale, averred to in paragraph 3 of the Amended Statement of Claim, said in evidence that the land in
G dispute is "*between Iddo-Oshun and Ofatedo.*" He also said that the river called Odo-Obedu is between the plaintiff's family land in dispute and his own family land. As there is no such averment in paragraph 3 of the Amended Statement of Claim, the evidence of
H PW6 goes to no issue. It is elementary law that parties are bound by their pleadings and facts not pleaded go to no issue. This principle of law is to ensure that the adverse party does not spring any surprise at the trial by giving evidence on what was not pleaded.**

I think I have taken all the persons mentioned in paragraph 4 of the Amended Statement of Claim. PW1 is not mentioned there. I should take his evidence also. PW1, the Oba Olafa of Ofatedo, knows only the boundary of Odo-Iya Oba stream. He does not know “*the other physical features that form the other boundaries.*” While this sounds strange, B considering the status of an Oba, paragraph 3 of the Amended Statement of Claim did not aver to Odo Iya Oba stream. Accordingly his evidence goes to no issue.

That takes me to the survey plan averred to in paragraph 5 of the Amended Statement of Claim. **Although the survey plan was averred to in paragraph 5 of the Amended Statement of Claim, it was not tendered in evidence. Why? As I said earlier in this judgment, this is a case where a court of law can invoke section 149(d) of the Evidence Act “that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.”** D See *Onuwaje v. Ogbeide* (1991) 3 NWLR (Pt. 178) 147; *Chief Udo v. Chief Okupa* (1991) 5 NWLR (Pt. 191) 365; *United Bank of Africa Ltd. v. Ibhaifidon* (1994) 1 NWLR (Pt. 318) 90; *Ogwuru v. Cooperative Bank of Eastern Nigeria Ltd.* (1994) 8 NWLR (Pt. 365) 685; *Tsokwa Motors (Nig.) Ltd. v. Awoniyi* (1999) 1 NWLR (Pt. 586) 199. E

The position of the law is that survey plan is not necessary where the identity of the land is not in dispute or there is cogent evidence of the identity of the land. But where the identity of the land is in dispute, such as in this case, and there is no cogent evidence on the identity of the land, the appellant ought to have tendered the survey plan averred to in paragraph 5 of the Amended Statement of Claim. F G

Learned counsel for the appellant submitted that the Court of Appeal did not properly analyse the case of the parties. With respect, I do not agree with him. **The Court of Appeal, in my humble view, properly analysed the case of the parties. It is clear from what I have said that the appellant as plaintiff did not prove his case and the learned trial Judge was clearly in error in giving him judgment. The Court of Appeal was therefore correct when the Court said in the final** H

paragraph of its judgment at page 140 of the Record:

“In a case of declaration of title to land a Plaintiff is required to prove his case with cogent, convincing and satisfactory evidence and once he has satisfied these requirements the court is bound to exercise its discretion in his favour, and grant the reliefs sought. I have doubt in my mind that the Respondent in his case discharged the burden placed on him by the law.”

I entirely agree with the Court of Appeal. This appeal has no merit and it is therefore dismissed. I award ₦10,000.00 costs against the appellant and in favour of the respondent.

MUSDAPHERJSC

D I have read in advance the judgment of my learned brother Niki Tobi, JSC just delivered with which I entirely agree, for the same reasons set out in the aforesaid judgment, which I respectfully adopt as mine, I too, find this appeal as lacking in merit. I therefore dismiss it and affirm the decision of the court below. I award ₦10,000 costs against the appellant in favour of the respondent.

ONNOGHENJSC

F This is an appeal against the judgment of the Court of Appeal holden at Ibadan delivered on the 6th day of March, 2000 in appeal No. CA/I/65/92 in which the court set aside the decision of the trial court delivered on the 31st day of May, 1991 in suit No. HOS/12/86 in favour of the plaintiffs, now appellants in this Court.

The claim of the plaintiff before the trial court, as per the amended statement of claim, is as follows:-

“(1) A Declaration to a Statutory Right of Occupancy in respect of all that piece or parcel of land situate, lying and being at between Obedu Stream and Iya Oba Stream in Offatedo.

(2) The sum of ₦500.00 (Five Hundred Naira) being damages for trespass committed by the Defendant on the said parcel of land.

(3) Perpetual injunction restraining the Defendant, their servants, agents and or any one claiming through them from committing any further act of trespass on the said land.”

The facts of the case include the following:

It is the appellant’s case that the land in dispute, which lies or situate B between Odo-Oba and Obedu Streams, Offatedo, is bounded on the first side by Joseph Aremu’s land, on the second side by Karimu Olawale’s land, the third by Buraimoh Dumoye’s land, and the forth by Oseni Olaniyan’s land, and that the said disputed land was granted to his C grandfather by name Ogunyemi by Oba Atoloye who was the first Olofa of Offatedo who was in turn granted a large piece or parcel of land including the land in dispute by Balogun Osungbekun of Ibadan, very many years ago; that his grandfather cultivated economic and food crops on the land; that after his death, he was succeeded by the plaintiff’s/appellant’s D father who continued to occupy the land and cultivate same and was in turn succeeded by the plaintiff/appellant; that the appellant was in peaceful possession of the land until 1985 when the respondent allegedly trespassed thereto. E

On the other hand, the case of the respondent is that the land was granted to him by Oba Laoye, the late Timi of Ede in 1975 and was put into possession in accordance with the customs and traditions of the people; that the appellant is estopped from contesting the title of the Timi of Ede F in view of the judgment in suit No. HOS/42/64 delivered on 14/2/68 and tendered and admitted as exhibit D.

As stated earlier in this judgment, the trial court gave judgment to the appellant which judgment was set aside by the Court of Appeal G resulting in the instant appeal.

The issues for determination in this appeal are stated by Prince J. O. Ijaodola in the appellant’s brief as follows:-

- “i. Whether Court of Appeal properly set aside the trial High Court’s judgment, and H*
- ii. Whether the Court of Appeal properly analysed the parties’ case.”*

On the other hand the learned Senior Counsel for the respondent N.

O. O. Oke Esq, SAN identified a single issue for determination, to wit:

“(i) Whether the Court of Appeal was not right in setting aside the judgment of the trial court on the ground that the Appellant’s case on the ground of the identity of the land in dispute is not made out.”

B It is very clear from the judgment of the lower court and the arguments of both counsel in their briefs of argument that the primary issue is whether the appellant, on whom lies the burden of proving the identity of the land whose title he claims, has discharged the burden so as to entitle him to the declaration sought. The requirement of establishment of the identity of the land in dispute is in addition to the duty placed on the appellant, as plaintiff, to establish the mode by which he came to own the disputed land. In the instant case, the appellant relied on traditional history of grant by the Olofa of Ofatedo. It is however settled law that where a plaintiff fails to establish with certainty the identity of the land claimed, he must fail in his claim of declaration of title irrespective of the weakness in the case of the defence particularly as it is the law that a plaintiff, in an action for declaration of title to land, must succeed on the strength of his case and not on the weakness of the defence, though in an appropriate case where the case of the defence supports that of the plaintiff, the plaintiff is entitled to rely on such evidence in support of his case to prove his case.

F The question then is: what is the case of the parties as regards the issue of identity of land in dispute? The answers are as pleaded in paragraphs 3, 4, 5 & 6 of the Amended Statement of Claim and paragraph 4 of the Amended Statement of Defence, which are as follows:

G *“(3) That the plaintiff avers that the land in dispute is situate, lying and being at between Obedu Stream and Iyana-Oba Stream in Ofatedo.*

(4) The land in dispute is bounded as follows:- On the first side by Joseph Aremu’s land, on the second side by Buraimon Dunmoye’s land, on the third side by Alhaji Olaniyonu’s land and on the forth side by Karimu Olawole’s land.

H *(5) The Plaintiff’s family has caused the land in dispute to be surveyed and survey plan No. FOY/385/85 of 10/6/85 was produced.*

(6) The plaintiff avers that Oba Atoloye who was the first Olofa of Ofatedo was granted among other parcels of land at Ofatedo, by the then

Balogun Oshungbekun of Ibadan.”

In reaction to the above, the respondent pleaded as follows:-

“(4) The Defendant avers with reference to paragraphs 2, 3, 4 and 5 of the Plaintiff’s Amended Statement of Claim that the defendant does not know the land in dispute as claimed by the plaintiff but further avers his own parcel of land is situate, lying and being along Idosun, Osogbo Road, Ede.”

It is very clear that both parties are not claiming the land through the same source but through two different grantors from two different but neighbouring communities. While the appellant is claiming through the Oba of Ofatedo community, the respondent claims through the Oba of Ede.

When one looks at the evidence adduced by the appellant in support of his pleadings on the identity of the land in dispute, one finds irreconcilable conflicts between the facts pleaded and the evidence adduced in proof thereof. That apart, the appellant failed and or neglected to tender the survey plan of the land as pleaded in paragraph 6 of the Amended Statement of Claim which would have settled the matter once and for all. I therefore agree with the lower court, as found at page 136 of the record thus:-

“Still, on the identity of the land in dispute it is instructive to note that no survey plan of the land was tendered in evidence in support of paragraph (5) of the Amended Statement of Claim. Authorities are however abound that it is not in every claim of a declaration to title to land that a survey plan becomes absolutely necessary to prove the claim and identity of the land ----- The above principle will only be applicable where there is proper identification vide the pleadings and evidence, but this is lacking in this case.”

I completely agree with the above holding of the lower court as it is settled law that where the identity of the land in dispute is in dispute, there is need to produce a survey plan particularly if the facts produced in evidence cannot establish, with certainty, the identity of the said land - see *Kyan v. Alkali (2001) 11 NWLR (pt. 724) 412; Odefeso v. Coker (1999) 1 NWLR (pt. 588) 654*.

In conclusion, I agree with the reasoning and conclusion of my

learned brother Tobi, J.S.C. in the lead judgment, a draft of which I had read, that the appeal is without merit and ought to fail. I therefore order accordingly and abide by the consequential orders contained in the said lead judgment including the order as to costs.

B Appeal dismissed.

TABAI JSC

C I had the privilege to read in advance the leading judgment of my learned brother Niki Tobi J.S.C. He analysed the evidence very carefully and concluded that the appeal has no merit.

D The core issue is that of identification of the land claimed. It is settled law that in a claim for declaration of title to land, the onus is on the Plaintiff to prove clearly the boundaries of the land claimed. See *Makanjuola v. Ogunshola* 4 WACA 159; *Udofia v. Afia* 6 WACA 216 at 217; *Amata v. Modekwa* 14 WACA 580 at 583. The standard of proof required of the Plaintiff is such that a surveyor taking the record could produce a plan E showing accurately the land in respect of which title is claimed. See *Makanjuola v. Ogunshola (Supra)*; *Kwadzo v. Adjei* 10 WACA 274.

F In this case no two witnesses told the same story about the boundaries of the land claimed. On this issue of the boundaries of the said land claimed the Plaintiffs/Appellants case was replete with contradictions. And to make matters worse the survey which they pleaded in paragraph 5 of the Statement of Claim was not tendered. The Plaintiffs/Appellants cannot, in these circumstances, claim to have proved title to a land which identity they have failed to establish.

G In view of the foregoing short commentary and the better reasons clearly set out in the leading judgment, I also dismiss the appeal. I abide by the order on costs in the leading judgment.

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ADEREMI JSC

This is an appeal against the judgment of the Court of Appeal (Ibadan Division) delivered on the 31st of May 1991. The appellant, who

was the plaintiff before the court of trial, had, by the endorsement in paragraph 16 of his amended statement of claim sought against the respondent, who was the defendant before that court, the following reliefs:

“(1) a declaration to a statutory right of occupancy in respect of all that piece or parcel of land situate, lying and being at between Obedu Stream and Iya Oba Stream in Ofatedo.

(2) the sum of ₦500.00 being damages for trespass committed by the defendant on the said parcel of land.

(3) perpetual injunction restraining the defendant, their servants, agents and/or anyone claiming through them from committing any further act of trespass on the said land.”

After the exchange of pleadings between the parties, evidence taken from both sides in proof of the averments in their respective pleadings and the final addresses of their respective counsel, the learned trial judge, in a reserved judgment delivered on 30th of May 1991, granted the reliefs sought by the plaintiff/appellant with costs. Dissatisfied with the said judgment, the present respondent, as defendant then, appealed to the court below which, after taking the submissions of the respective counsel highlighting the issues in the separate briefs of argument filed by the parties, in a reserved judgment delivered on the 31st of May 1991, the court below allowed the appeal, mainly, for the reason of failure to prove, with certainty, the identity of the land in dispute. Again, dissatisfied with the judgment, the original defendant, as respondent before the court below, appealed to this court. In his brief of argument, the present appellant raised two issues for determination and they are as follows: -

“(1) Whether the Court of Appeal properly set aside the trial High Court’s judgment.

(2) Whether the Court of Appeal properly analysed the parties’ case.”

The respondent, for his part, raised only one issue for determination and it is in the following terms: -

“Whether the Court of Appeal was right in setting aside the judgment of the trial court on the ground of the identity of the land in

dispute is not made.”

In my humble view, the only issue raised by the respondent captures the real matter in controversy in this appeal. Proof of identity of a piece of land in dispute is of utmost importance if any success is to be attained in any land suit. A plaintiff seeking the reliefs of the nature claimed in this matter has a cardinal duty to show, with certainty, the area of land being claimed and to which he wants the order of court to relate to; failure to do so, the entire case must stand dismissed. See *Baruwa v. Ogunsola* 4 WACA 159; *Elias v. Omobare* (1982) 5 S.C. 25; *Awere v. Lasoku* (1975) N.M.L.R. 100 and *Sangosanya v. Salawu* (1975) N.M.L.R. 27. Although a survey plan is not an absolute necessity in every land case. See *Olusanmi v. Oshasona* (1992) 6 N.W.L.R. (pt.245) 22; where however a plaintiff desires to draw up or cause to be drawn up a survey plan showing the land in dispute, such a plan must show clearly the dimensions of the land, the boundaries and other salient features. See *Arabe v. Asanlu* (1980) 5-7 S.C. 78. The demand for this is in consonant with the maxim: “*Id Cerium Est Quod Cerium Reddi Potest; Sed It Magis Certum Est Quod De Semet Ipso Est Certum*” meaning: “That is certain which can be made certain; but that is most certain which is certain on the face of it.” See *Ayinla v. Adisa* (1992) 7 N.W.L.R. (pt.255) 566.

I have meticulously read the evidence led in relation to the identity of the land in dispute. I regret to say that the collection of the pieces of evidence led by PW1, PW2, PW3, PW4, PW5 and PW6 do not, together, point to the same land upon which the plaintiff/appellant is litigating. I need not reproduce those salient pieces of evidence here for they have been reproduced in the leading judgment of my learned brother, Tobi, J.S.C. It is sufficient for me to say that the collection of the pieces of evidence of these witnesses does not, in the slightest imagination, point with any clarity to the land, the subject matter of dispute in this matter. I also observe that the parties tried to give different names to the land disputed upon in this case. Let me say that the ascription of different names by the parties to a disputed land, even with alarming degree of imprecision, may not necessarily be detrimental to a party’s case. What is of utmost importance and indeed, the emphasis in a case of this nature is that the parties must

be ad idem on the same area of land that is being given different names for various reasons. See *Aromire v. Awoyemi* (1972) 1 ALL N.L.R. (p.1) 101 and *Makanjuola v. Balogun* (1989) 3 N.W.L.R. (pt.108) 192. In the instant case, it is very clear that the evidence led by the witnesses called by the plaintiff/appellant is totally lacking in descriptive value of the land litigated upon. On that alone, the case ought to have been dismissed ab initio. B

It is for this little contribution but most especially for the copious reasoning contained in the leading judgment that I agree with my learned brother Tobi, J.S.C., that this appeal is unmeritorious. I also agree with the judgment of the court below and in the final analysis, I dismiss the appeal. I abide by all other consequential orders made in the leading judgment including the order as to costs. C

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