

SUPREME COURT OF NIGERIA
8TH MARCH, 2009. SC. 291/2002
CORAM:- A. I. KATSINA-ALU, A. M. MUKHTAR,
W. S. N. ONNOGHEN, P. O. ADEREMI,
C. M. CHUKWUMA-ENEH JJSC

1. ONUOHA NWOKOROBIA APPELLANT
AND
1. DESMOND UCHECHI NWOGU
2. JAMES AWAZIEAMA RESPONDENTS
3. MATHIAS AHAMBA

LAND LAW - Title - Claim for - Identity of land - Means of proof -
Can be by evidence of boundary men of the land in dispute - Or by
a plan - Court of Appeal was therefore wrong - To hold that there is
no certainty of description - In view of evidence on record (H1)

PLEADINGS - Nature - Binding effect of - Litigation is fought on
pleadings of parties - Pleadings bereft of necessary facts cannot be
proved by evidence no matter how cogent - As parties are bound by
their pleadings (H2)

LAND LAW - Title - Proof - Traditional evidence - Necessary facts -
Must contain such facts as who founded the land - How he founded
it - And particulars of intervening owners (H3)

LAND LAW - Title - Traditional history - Sufficiency of pleading -
Paragraph 4 of statement of claim is bereft of who founded the land
- Because it generalized that it was owned by the family of Nwoko -
When it is usually one person that founds a land (H4)

EVIDENCE - Discrepancies - In own traditional evidence - Effect -
Minor as the discrepancies may be - They are material to the deter-
mination - Of the veracity of the traditional evidence (H5)

EVIDENCE - Outside pleadings - Fate of - Such evidence - Like the
testimony of appellant that Nwoko deforested the land - Should be
ignored and treated as non issue (H6)

LAND LAW - Title - Proof by traditional evidence - Effect of contradiction - It can not sustain the action for declaration of title - As traditional history must be pleaded & proved with consistent & uncontradicted evidence (H7)

APPEALS - Findings of facts - By trial judge - Attitude of appellate court - Is not to interfere therewith - Unless it is perverse & not supported by credible evidence (H8)

LAND LAW - Title - Proof of ownership of surrounding land - Legal implication - Appellant has proved that the land he is farming on - Is contiguous to the land in dispute - This raises the probability - That he owns the land in dispute (H9)

LAND LAW - Title - Proof - Whether achieved - Appellant may have failed to prove title by traditional history - But he proved it by one of the ways - Enunciated in *Idundun v. Okumagba* - As proof in civil cases is on a balance of probability (H10)

FACTS

Plaintiff/appellant sued defendants/respondents at the High Court claiming declaration of title to the land in dispute, possession and perpetual injunction. Though he relied on traditional history as proof of his entitlement to the reliefs, he failed to plead the founder of the land and how it was founded. Moreover his plan did not contain all the features of the land upon which he relied.

Nevertheless, evidence showed that appellant and his extended family owned the pieces of land surrounding the land in dispute. After hearing, the trial court held that irrespective of the flaws in his pleadings, appellant had proved his entitlements to the reliefs claimed. Accordingly it gave judgment as prayed. Aggrieved, respondents appealed to the Court of Appeal. Dissatisfied, appellant has brought this appeal against the judgment of the Court of Appeal.

ISSUES FOR DETERMINATION

“1. Whether the lower court was right in holding that there was no certainty in the description of the disputed land by the Plaintiff/Respondent/Appellant evidence before the trial court.

2. Whether the Plaintiff/Respondent/Appellant has established his ownership of the land by traditional history."

HELD (Unanimously allowing the appeal per **MUKHTAR JSC**)

Title - Claim for - Identity of land

1. The cardinal principle of law is that in a claim of declaration of title to land a party must prove the identity of the land he is claiming with definitive certainty. Proof can be by evidence of the boundary men of the land in dispute, and a plan. The learned trial judge accepted the evidence adduced by the appellant and found on the identity of the land which I consider to be correct, as that was ample credible evidence in support. In this respect the Court of Appeal was therefore in error when it found as follows:-

"One can see from the description given that no features are mentioned apart from the names of boundary neighbours. There is no certainty whatsoever in the description of the disputed land as testified by the respondent, and the survey plan Exhibit A could not do any better since he was the one who showed the surveyor what he drew in Exhibit A. I resolve this issue in favour of the appellants." (p. 1316 D)

PLEADINGS - Nature - Binding effect of

2. It is settled law that litigation is fought on pleadings of the parties, as it forms the foundation from which it is developed and tackled to the stage of judgment. It is pleadings that form the basis of the plank of a case and the evidence that is adduced in support therefore. Hence the fulcrum of a case is derived from the pleadings and its success depends thereon, for pleadings that are bereft of the facts needed to prove a case, cannot be proved by evidence no matter how cogent, i.e. parties are bound by their pleadings. (p. 1316 H)

Title - Proof - Traditional evidence - Necessary facts

3. The law is well settled that where evidence of tradition is relied on in proof of declaration of title to land, the plaintiff, to succeed, must plead and establish such facts as; who founded the land, how he founded the land and the particulars of the intervening owners through whom he claims. (p. 1318 A)

Title - Traditional history - Sufficiency of pleading

4. The pertinent question here is, has the appellant pleaded traditional history and has his evidence so far reproduced above proved traditional history in consonance with the principle of law laid down in the Nkano v. Obiano case supra? As far as I can see, paragraph (4) of the statement of claim supra is bereft of who founded the land and how it was founded. The fact that the said paragraph (4) stated that it was originally owned by the family of Nwoko has not specifically stated that Nwoko founded the land part of which is in dispute because it generalized that it was owned by the family of Nwoko, when it is usually one person that founds a land, either by settlement, conquest etc. (p. 1319 G)

Discrepancies - In own traditional evidence - Effect

5. There are the discrepancies in his own evidence, like why his father was called Amaechi, and then his evidence that Agbakwuru was his father's senior brother. See pages 62 ad 64 of the printed record of proceedings. I can't seem to reconcile these two facts, because if the appellant's father was called Amaechi because his grandfather had suffered the loss of children before him, then the reasonable presumption is that Amaechi did not have any brother that is senior to him. Minor as the discrepancies may be, they are material to the determination of the veracity of the traditional evidence. (p. 1320 B)

EVIDENCE - Outside pleadings - Fate of

6. It is a fact that the appellant while being cross examined did testify that Nwoko deforested the land. This is however outside his pleadings, and the law is settled on the effect of such evidence which does not derive its source from the pleadings. The position of the law is that evidence must support pleadings, as a party is expected to give evidence that is within the periphery of his pleadings and not beyond it. When such evidence are adduced the law says they should be ignored as they are regarded and treated as non issues. (p. 1320 D)

Title - Proof by traditional evidence - Effect of contradiction

7. Whereas the appellant's history started with Nwoko family as the original owner of the land in dispute, that of PW6 started with one Nkudehi (the father of Nwoko whom he described as the original

owner of the land. It is in fact a deviation from the appellant's case, and the contradiction is glaring. It is a cardinal principle of law that a party who seeks a relief of an order of declaration of title to land and it is predicated on traditional history, it must plead and prove its case with cogent, credible, consistent and uncontradicted evidence. Evidence that are not consistent, but have discrepancies cannot sustain an action for declaration of title to land. (p. 1321 C/E) B

Findings by trial judge - Attitude of appellate court

8. It was the learned trial judge who saw and heard the witnesses of both sides, so he had the singular advantage of determining their credibility vis a vis the evidence of the other parties. The prerogative of believing or not believing any witness squarely rests on a trial judge who watched the demeanour of witnesses, and the law is settled that any finding of a judge based on facts cannot and will not be interfered with by an appellate court unless the finding is perverse and is not supported by unchallenged credible evidence. (p. 1323 C) C
D

Title - Proof by ownership of surrounding land

9. The appellant in this appeal has proved that the ownership or possession of the various pieces of land surrounding the land in dispute and which form boundaries to the land, vest on the appellants' relations, with whom they share common ancestry. The appellant has also shown vide Exhibit A' that the land very next to the land in dispute is in his possession. Although the acts of possession of the land was not satisfactorily established as is discussed in the earlier part of the judgment due to the discrepancies in the evidence of the appellant's evidence, the appellant has proved that the land he is farming on is contiguous to the land in dispute, and this has raised the probability that the appellant owns the land in dispute. (p.1323 G) E
F
G

LAND LAW - Title - Proof - Whether achieved

10. The law is trite that civil cases are decided on balance of probability and preponderance of evidence. H

In the light of the above discussions and reasonings I am satisfied that the appellant proved his ownership of the land in dispute vide the fifth way of proving title to land. The appellant may have

failed to prove title by traditional history, which was what he predicated his case on but the evidence before the court has proved his entitlement to the land by one of the ways enunciated in the Idundun v. Okumagba case supra. (p. 1324 B)

B **NOTABLE POINTS OF INTEREST**
ONNOGHEN JSC

A claim for possession puts title in issue

1. It is settled law that where a plaintiff claims the relief of recovery of possession of a piece of land, he puts his title to the said land in issue particularly where the defendant contends that he is in possession of the land on the ground that he is the owner thereof. (p. 1324 H)

Different names for same land does not make identity uncertain

2. The fact that both parties refer to the same land by different names does not make the identity of the land uncertain particularly where the plaintiff's claim thereto is tied to a survey plan drawn to scale by a licenced surveyor as in the instant case. (p. 1325 E)

E **ADEREMI JSC**

Identity of land - It is only required that parties be ad idem on area

3. I hasten to say that, in law, the ascription of different names by the parties to the same areas of land in dispute, even with alarming degree of imprecision, is often not detrimental to the parties case or cases as the case may be. The emphasis on which an adjudicator always insists is that the parties being ad idem as to the same areas that are being given different names for various reasons. (p. 1328 F)

G **CHUKWUMA - ENEH JSC**

Appeals - Intervention in findings - Reasons must be set out

4. It is trite that an appellate court as the court below should not intervene merely because it seems to it to have superior reasoning to surplant. This court has time without number warned against such temptation.

The grounds for intervening as a matter of duty have clearly to be set out in any case otherwise, respectfully, it (i.e. the intervention) looks capricious. (p. 1333 C)

REPRESENTATION

P. O. Okolo Esq. with him are Messrs. Usman Ani; G.N. Onyebule; C. C. Chude (Miss.); and F. N. Onuoha, for the Appellant.
K. C. J. Okereke Esq. for the Respondent.

B

CASES REFERRED TO

Odojin v. Ayoola 1984 11 SC. 72
Baruwa v. Ogunshola 4 WACA 159
Adomba v. Odieze 1990 1 NWLR part 125, page 165
Udeze v. Chidebe 1990 1 NWLR part 125 page 141
Ezeokeke v. Uga 1962 1 All N.L.R. 482
Okolo v. Nwamu 1973 2 SC. 59
Elias v. Omo-Bare 1982 5 SC. 25
Odulaja v. Haddad 1973 11 SC. 357
Ojoh v. Kamalu & ors 2005 12 SCNJ 236
Agbana v. Owah & ors 2004 5 SCNJ 195
Nwabuoku & ors v. Onwordi & ors 2006 5 SCNJ page 359
Ezeokeke v. Uga 1962 1 All N.L.R. 482
Okolo v. Nwamu 1973 2 SC. 59
Shell B.P. v. Abedi 1974 1 SC. 23

C

D

E

STATUTE REFERRED TO

Evidence Act, Cap 112, L. F. N 1990; ss. 45 & 46

F

LEAD JUDGMENT BY MUKHTAR JSC

This is an appeal against the decision of the Court of Appeal, Port Harcourt Division delivered on 13th of June, 2002. The process that culminated into this appeal before us started at the High Court of Mbaise, Imo State. The appellant in this court was the plaintiff in that court, and the parcel of land which he was claiming against the respondents is called ‘ODONKWU NWOKOROBIA’, situate in Umualim Ikenga Eziudo Aboh Mbaise. The plaintiff traced the history of the land in dispute to himself in his statement of claim, and claimed therein as follows:-

“26 (a) An order of court commanding the defendants to surrender to the Plaintiff all the piece or parcel of land which is part of

ODONKWUNWOKOROBIA, and situate in Umualim Ikenga Eziudo in Aboh Mbaise, which piece or parcel of land has been in possession of the defendants, and which the defendants have refused to surrender despite repeated demands.

(b) *An injunction perpetually restraining the defendants, servants and or their privies from further entry into the lands so surrendered.*”

After pleadings were ordered, and the defendants refused/or neglected to file their statement of defence, the plaintiff sought for judgment to be entered in his favour, but the learned trial judge insisted that he would hear oral evidence. Meanwhile the defendants sought and obtained an order of extension of time to file their statement of defence. In their joint statement of defence, the defendants denied most of the claims in the statement of claim, alleging that the land in dispute forms part of a land “UKPABI”, and not Odonkwu Nwokorobia’, and the land was pledged to Iwundu Ashiru by Nwokorobia. According to the defendants the land in dispute was from time immemorial owned and possessed by the Ogide family from whom the defendants inherited the land, Ogide being their ancestor. The land was pledged to Onuoha Nwachukwu Agunkwo of Umuwada Onicha, and the defendants sought to redeem it.

Both sides to the litigation adduced evidence. The learned trial judge appraised the evidence before him, considered the addresses by learned counsel, and at the end of the day found in favour of the plaintiff and gave judgment as follows:-

“All aspects of this case and on all issues raised and canvassed by the parties, I am satisfied that the plaintiffs case yielded the degree of proof required in civil cases. In other words he has proved his case on the balance of evidence as being more probable. Accordingly, judgment is hereby entered for the plaintiff in terms of his claim for surrender of the land in dispute shown, demarcated and verged Red in Exhibit A and for (2) perpetual injunction restraining the defendants, their servants or their privies from further entry into the land so surrendered.”

The defendants were aggrieved by the judgment, and so appealed to the Court of Appeal, which set aside the above judgment. Dissatisfied with the setting aside, the plaintiff appealed to this court on four grounds of appeal. Learned counsel for both sides exchanged

briefs of argument, on the appeal, as is the practice in this court. Issues for determination were raised in the briefs of argument. In the appellant's amended brief of argument are the following issues:-

- "1. *Whether the lower court was right in holding that there was no certainty in the description of the disputed land by the Plaintiff/Respondent/Appellant evidence before the trial court.*" B
2. *Whether the Plaintiff Respondent/Appellant has established his ownership of the land by traditional history.*"

The following issues for determination are in the amended respondents' brief of argument:-

- "(1) *Whether the Appellant had by credible evidence established the identity/features of the land in dispute.*" C
- (2) *Whether the Appellant had established ownership over the land in dispute.*"

The two sets of issues are in essence the same. In arguing issue D (1), the learned counsel emphasized the impropriety of the Court of Appeal overturning the findings of fact of the trial court which heard and watched the demeanour of the witnesses along side the veracity of Exhibits 4A' and CB' tendered by both parties. Learned counsel submitted that the trial court based its findings on the credibility of the witnesses, and even went further to state clearly that DW3 was unreliable and inconsistent. He placed reliance on the case of Iwuorie Ihnacho & others v. Mathias Chigere & 3 others 2004 177 NWLR part 901 page 130. Learned counsel reiterated the principle of law F that an appellate court will not ordinarily interfere with the findings of fact of a trial court unless there is ample evidence that the trial court failed to evaluate and make proper findings. In such a situation the appeal court ought to give its reasons, but it did not in the instant case. Reliance was placed on the cases of Chief James Obande Ibori v. Engineer Goodness Agbi & 5 others 2004 6 NWLR part 78 page 123, and Chief P.M. Okochi & 2 others v. Chief Amukali Animkwai & 2 ors 2003 18 NWLR part 851 page 1. The main bone of contention on the identity of the land in dispute was the rejection of the probative value of exhibit 'A' by the lower court, when the defendant did H not challenge any aspect of it. The case of Omoigie v. Idugienwanye 1985 2 NWLR part 5 page 41 was referred to.

The learned counsel for the respondents in their amended brief of argument submitted that the identity of the land in dispute was an

issue, as is averred in paragraph (4) of the statement of defence, and so are the features of the land, as can be seen in paragraphs (5) and (6) of same. According to learned counsel no features of the land in dispute was given in evidence by the appellant and his witnesses, thus the appellant failed to discharge the first burden on him at the trial, which was to establish the identity of the land. Reliance was placed in the cases of *Odofin v. Ayoola* 1984 11 SC. 72, *Baruwa v. Ogunshola* 4 WACA 159, *Adomba v. Odieze* 1990 1 NWLR part 125, page 165, *Udeze v. Chidebe* 1990 1 NWLR part 125 page 141, and *Tukuru v. Saki* 2005 3 NWLR part 913 page 544. Learned counsel further submitted that the burden of proving the features on the plan was on the appellant, contrary to the submission of the appellant that it rested on the respondents. He cited the cases of *Ojoh v. Kamalu & ors* 2005 12 SCNJ 236, *Agbana v. Owah & ors* 2004 5 SCNJ 195, and *Nwabuoku & ors v. Onwordi & ors* 2006 5 SCNJ page 359.

At this juncture I will reproduce the relevant averments in the appellant's statement of claim here below. They read:-

"3 (a) The land part of which is the subject matter of this dispute is generally called 'ODONKWU NWOKOROBIA'. NWOKOROBIA was the father of the Plaintiff. It is situate in Umualim Ikenga Eziudo Aboh Mbaise within jurisdiction. It is a very large area of land. The whole of "ODONKWU" is shown on Plan No. VEN/D234/87 which is attached and filed with this statement of claim. It is hereby marked Exhibit 'A' at the trial, the Plaintiff shall rely on the features shown on the plan as well as on those not shown on the Plan as well as on those not shown in so far as they are relevant.

(b) Part of 'ODONKWU NWOKOROBIA' which is the subject matter of this dispute and which the Plaintiff and his immediate brothers inherited from their father is more particularly shown on the Plan No. VEN/D234/87 attached to this statement of claim and verged Green. Exhibit 'A'

(c) This area verged green is almost surrounded by the lands belonging to the other sections of Nwokorobia and Elemaranya family namely, Egbukichi Owunna Elemaranya, Timothy Njoku Elemaranya, Aligwekude Nwokorobia, Maduneme Nwokorobia, Onyekwere Nwokorobia, Eneremadu Nwokorobia, Akwaja Nwokorobia and Ihuoma Nwokorobia, as well as portions of 'ODONKWU' on pledge to Oluo of Umuawada and Osuagwu

Onueha of Umuwada both in Onucha by the Plaintiff and his fore fathers.

(d) ‘ODONKWU NWOKOROBIA’ has boundary on the Eastern side with the lands of Umuzu people of Eziudo, Umuzu people have no relationship with the people of Umualim Ikenga Ezuido from where the Plaintiffs hails. The defendants have no lands here as of right except the area granted to their forefathers by the plaintiffs forefathers which is the history that is the subject matter of this dispute. The area of ‘ODONKWU NWOKOROBIA’ pledged by NWOKOROBIA to one Iwundu Eshihe of Umuzu Village which was redeemed by the plaintiff and his late Senior brother in 1940 is verged yellow on the Plan attached. The area of ‘ODONKWU’ which is still in possession of the defendants’ family and which is the subject of this dispute is verged PINK also in the Plan attached.”

Now, how did the respondents react to the above pleadings? In their joint statement of defence the defendants made the following averments:-

“4. The Defendants deny paragraph 3 (a) of the Statement of Claim. The Defendants particularly deny that the plaintiff and his immediate brothers inherited the portion of Ukpabi land in dispute from their father. The plaintiffs plan No. VEN/D234/87 annexed to the statement of claim does not fully represent the land in dispute. The Defendants at the trial shall tender and rely on Survey Plan No. ASA/IMD 208/89 as a true representation of the land in dispute and its features.

5. The land in dispute has been shown and verged Green and Red in the said Plan No. ASA/IMD 208/89 annexed to this statement at Defence.

6. Paragraphs 3(c) and 3(d) of the statement of claim are denied. The Defendants aver that the land in dispute is bounded as follows:-

(a) On the West by:

(i) The land of Ojimadu of Umuzu Eziudo

(ii) The land of 1st Defendant (not in dispute) and

(iii) The land of 3rd Defendant not in dispute.

(b) In the North by land of Uwakwe family (Gabriel Uwakwe) of Umuwada Onicha not in dispute and the land of the 3rd Defendant’s father not in dispute but on pledge to Akwaja

Nwokorobia.

(c) In the East the land of Eneremadu Adumele family of Unweremanya (no relations of the plaintiff), the land of the 3rd Defendant in dispute and the land of the 2nd Defendant not in dispute.

(d) In the south by the land of the 1st Defendant not in dispute and that of Augustine Uchegbu of Umuwada Onicha.

7. Further to paragraph 6 hereinabove the Defendants state that no member of the plaintiffs family has any land around the land in dispute. The only Eneremadu that has land adjoining land in dispute is Eneremadu Adumele. There is no Eneremadu Nwokorobia in Umualim. Neither the land nor any land adjoining it was pledged to Iwundi Ashihu by Nwokorobia.

8. In further answer to paragraph 3(d) of the Statement of Claim the Defendants state that all the parcel of land owned at Ukpabi by the Defendants devolved on them from their forebears. The lands came to them as of right. The forefathers of the plaintiff did not grant any land to the Defendants' forefathers. The Defendants came into possession and ownership of their Ukpabi lands including the land in dispute by inheritance. The lands have since been shared or partitioned by the Defendant's family members."

It is clear from the above averments that the respondents/defendants joined issues with the appellant/plaintiff on the identity of the land in dispute. Now, what was the evidence in support of the appellant's pleadings? On the evidence of identity of the land, the appellant gave the following evidence in his examination in chief: -

"I showed the boundaries of the land to the surveyor before he made Exhibit A. There is a pathway passing through the land between Umuawada and Ezindo Ezinihitte, I started showing the surveyor the extent of the land in dispute from the boundary with the land of Onyekwere Nwokorobia; the next boundary neighbour is Maduneme Nwokorobia; after that there is land of Aligwekwe Nwokorobia; thereafter there is the land of Timothy Njoku of Umuelemaranya Ezindo. Elemoranya and my father Nwokorobia were the sons of one father. After the land of Timothy Njoku the next boundary neighbour is Egbukioki of Umuelamaranya Eziudo..... After Akwaja second parcel of land there is the land of Ekweremadu, The boundary neighbours I have mentioned are all the children of Nwokorobia - my late father."

In the course of cross examination, P.W.1 testified as follows inter alia:-

*"I know the expanse of land called Ukpabi. My father got his own land near Ukpabi land and called it Odonkwu.....
The persons I mentioned as my boundary neighbours are indeed my boundary neighbours; they are available as my witnesses."* B

PW2 Gabriel Uwakwe who was not an immediate boundary man, in the course of cross-examination stated thus:-

"The man I have been seeing farming on the land in dispute is the plaintiff. The land in dispute is part of the vast area called Ukpabi land. I do not know of any other name by which the land in dispute is called except Ukpabi, No body lives on the land in dispute." C

P.W. 3 testified that his land is close to the land in dispute, and that the appellant had been farming on the land since he was born, but under cross examination he reiterated the evidence of P.W 2 D above, that the land in dispute falls within Ukpabi land. In fact his evidence reads thus:-

"I know an area of land called Ukpabi. The land in dispute as well as other lands where the Defendants farm fall within the area called Ukpabi." E

Contrary to the evidence of PW.3, that the appellant has been farming on the disputed land, P.W. 4 testified that the defendants have been farming on the land.

Looking carefully at Exhibit A the plan tendered by the appellant, I can see that the boundary men mentioned by the appellant in his evidence are reflected therein. The boundary men testified to that effect, but it is instructive to note that whereas the appellant described the land in dispute as part of Odonkwu Nwokorobia, some of his witnesses described it as part of Ukpabi land, the latter of which supports the case of the respondents, as is stated by the following pieces of evidence:-

"DW 1....."

The land in dispute is called Ukpabi. I know the land called Ukpabi, it is a vast expanse of land. The land now in dispute belongs to my family of Umuogide. Apart from Umuogide other people own land in the area called Ukpabi. The people of Umunosisi Obizi farm on the Ukpabi land as land owners. Umuzu Eziudo people own land at Ukpabi. The Umuada Onicha people own land in the area called H

Ukpabi. I do not know of any land in Umualim called ‘Okonkwu Nwokorobia..... Odonkwu means a palm plantation. The land in dispute has never been a palm plantation to my knowledge.’

It is instructive to note that the last sentence of the evidence contradicts the evidence of the appellant, when he said inter alia as follows:-”

My father planted oil palm trees on the land when he inherited it and it became known as Odonkwu”.

Looking carefully at Exhibit ‘A’, (the appellant’s plan), particularly the whole land verged green, supposedly known and called ‘Odonkwu Nwokorobia’, I fail to see that a palm plantation exists thereon. There are trees depicting palm trees, but these are but a few here and there in the upper area of the land. In fact I can count only four of such. Could that therefore be said to constitute a plantation? I have my doubt.

The cardinal principle of law that is that in a claim of declaration of title to land a party must prove the identity of the land he is claiming with definitive certainty. Proof can be by evidence of the boundary men of the land in dispute, and a plan. See Ezeokeke v. Uga 1962 1 All N.L.R. 482, and Okolo v. Nwamu 1973 2 SC. 59. ***The learned trial judge accepted the evidence adduced by the appellant and found on the identity of the land which I consider to be correct, as that was ample credible evidence in support. In this respect the Court of Appeal was therefore in error when it found as follows:-***

“One can see from the description given that no features are mentioned apart from the names of boundary neighbours. There is no certainty whatsoever in the description of the disputed land as testified by the respondent, and the survey plan Exhibit A could not do any better since he was the one who showed the surveyor what he drew in Exhibit A. I resolve this issue in favour of the appellants.”

For the foregoing, I resolve this first issue in favour of the appellant, and so the related grounds of appeal nos (1) and (2) succeed.

Now, to issue (2) in the appellant’s brief of argument supra, on the establishment of the ownership of the land by traditional history. ***It is settled law that litigation is fought on pleadings of the parties, as it forms the foundation from which it is developed***

and tackled to the stage of judgment. It is pleadings that form the basis of the plank of a case and the evidence that is adduced in support therefore. Hence the fulcrum of a case is derived from the pleadings and its success depends thereon, for pleadings that are bereft of the facts needed to prove a case, cannot be proved by evidence no matter how cogent, i.e. parties are bound by their pleadings. See Shell B.P. v. Abedi 1974 1 SC. 23, and Ebosie v. Phil-Ebosie 1976 7 SC. 119. B

In this direction I will reproduce the salient paragraph of the appellant's statement of claim which sought to establish the pivot of his claim, which seems to me to be traditional history. The averment reads:- C

"4. The said 'Odonkwu Nwokorobia' was originally owned by the family of Nwoko of Umualim Ikenga Ezindo. When Nwoko died he left two sons, Elemaranya and Uhuakwukwa who shared his landed property between themselves. Nwokorobia was a descendant of Nwoko." D

It is the contention of the learned counsel for the appellant that the above paragraph can not be described as bereft of the requisite particulars in a claim based on traditional history, and he has taken us through the rigours of the definition of the word 'original', as used in the above paragraph. The learned counsel has submitted that pleading does not contain evidence, and so the description of the plaintiffs grandfather as the original owner is sufficient pleading as far as deforestation is concerned. He referred to the case of Adisa v. Oyinwola 2000 6 SCNJ 290. E
F

In this reply the learned counsel for the respondents has argued that the appellant woefully failed to prove his case, and so the Court of Appeal was right in its finding on it. He stated that the appellant has a duty to bring his claim under one the five ways of proving title to land as enunciated in the case of Idundun v. Okumagba 1976 1 NMLR 200, one of which is traditional history. He relied on the case of Jiya v. Shande 2005 9 NWLR part 931 page 543. He further argued that if a plaintiff elects to pursue his case by traditional history the law requires him to plead and prove who founded the land, how he founded it and particulars of intervening owners through whom he claims. See Osafire v. Odi 1994 2 NWLR part 325 page 125, Ezeokonkwo v. Okeke 2002 5 SC part 1 page 44, and Nkano v. G
H

Obiano 1997 50 LRCN 1048, where the Supreme Court laid down the principles governing such claims.

The law is well settled that where evidence of tradition is relied on in proof of declaration of title to land, the plaintiff, to succeed, must plead and establish such facts as; who founded the land, how he founded the land and the particulars of the intervening owners through whom he claims. The learned counsel further argued that apart from the absence of satisfactory pleading the evidence led by the appellant is fatally flawed by glaring contradictions. What are the averments on the successive ownership of the land? In the statement of claim can be found the following:-

“5. Uhuakwukwa died living four sons namely Agbakwuru, Nwanguma, Njoku and Amaeshi (alias Nwokorobia) father of the plaintiff.

6. At the death of Uhuakwukwa, ‘Odonkwu’, the land part of which is now in dispute was allotted to Amaeshi (alias Nwokorobia) father of plaintiff.

7. In his life time Amaeshi (Alias Nwokorobia) farmed on this land with members of his family, built their houses on some parts of this land without interference from anybody whatsoever.

11. Amaeshi (Alais Nwokorobia) Plaintiffs father had two other brothers, the oldest of whom was called Agbakwuru.

13. On the day in question, Agbakwuru, senior brother of Nwokorobia in a state of excitement and joy, because his newly married wife was to return, drew out his cap-gun and aimed to shoot at the sky. As he was about doing this somebody from the crowd hit him by the hand saying ‘do not do this’ Agbakwuru’s hand dropped, the cap-gun exploded and one Ikpo Ogide who came from the defendants family was killed accidentally.

15. When the defendants’ family could not get at Agbakwuru, they arrested his brother Amaeshi (alias Nwokorobia) and that he should pay for his brother with his head.

16. Amaeshi (alias Nwokorobia) pleaded with them to allow him time to find his brother and for the mean time, gave them a portion of “ODONKWU land with the tacit understanding that if Agbakwuru was found, and vengeance extracted according to Custom, the land so given would be returned. This land which is verged PINK on the plan attached is still in the possession of the defendants

who are the descendants of Ogide family in Umualimikuenga Ezindo. This area of 'ODONKWU' is the land in dispute in this suit.

17. A year later Amaeshi (Alias Nwokorobia) learnt that his brother Agbakwuru was hiding in a nearby village, he decided to have him back, arranging in the process that the defendants' family should extract their revenge in the process. B

18. As Agbakwuru was being taken home, he was attacked and killed by members of the defendants' family paying therefore with his head for the death of Ikpo defendant's relation in accordance with Native Law and Custom of their people." C

I will at this juncture reproduce pieces of various evidence given by the appellant himself in an endeavour to trace the history of the land. At the beginning of his evidence in chief he said:-

"The Odonkwu Nwokorobia is situate at Umualim Eziudo Ezinihitte Mbaise within jurisdiction. I inherited the land in dispute from my father Nwokorobia. I knew a man called Nwoko. He Nwoko was my grandfather. My father Nwokorobia inherited the land in dispute from his own father named Nwoko who is now dead. When Nwoko died his sons shared his lands. He had two sons who shared his lands after his death. His first son was Elemanya; his second son was named Uhuakwukwa Egbuleye. Nwoko was the father of Uhuakwukwa Egbuleye. Nwoko was the father of Uhuakwukwa who was the father of Nwokorobia. My father's name is Nwokorobis, he was also known as Amaeshi..... My father was called Amaeshi from birth but after the killing of the member of Ogide family he began to be called Nwokorobia. My father Nwokorobia, his father Umuakwukwa and grandfather named Nwoko farmed on the land in dispute. E F

My father inherited the land from his father. Nwokorobia is now dead" G

The pertinent question here is, has the appellant pleaded traditional history and has his evidence so far reproduced above proved traditional history in consonance with the principle of law laid down in the Nkano v. Obiano case supra? As far as I can see, paragraph (4) of the statement of claim supra is bereft of who founded the land and how it was founded. The fact that the said paragraph (4) stated that it was originally owned by the family of Nwoko has not specifically stated that Nwoko founded the land part of which is in dispute because it H

generalized that it was owned by the family of Nwoko, when it is usually one person that founds a land, either by settlement, conquest etc. In the instant case it is not even known how the said Nwoko owned the land (assuming the pleading established that he found it). Then came the pieces of evidence reproduced above which
 B are devoid of the facts needed as evidence of tradition in proof of traditional history.

Then ***there are the discrepancies in his own evidence, like why his father was called Amaechi, and then his evidence that Agbakwuru was his father's senior brother. See pages 62 ad 64 of the printed record of proceedings. I can't seem to reconcile these two facts, because if the appellant's father was called Amaechi because his grandfather had suffered the loss of children before him, then the reasonable presumption***
 C ***is that Amaechi did not have any brother that is senior to him. Minor as the discrepancies may be, they are material to the determination of the veracity of the traditional evidence.***
 D

It is a fact that the appellant while being cross examined did testify that Nwoko deforested the land. This is however
 E ***outside his pleadings, and the law is settled on the effect of such evidence which does not derive its source from the pleadings. The position of the law is that evidence must support pleadings, as a party is expected to give evidence that is within the periphery of his pleadings and not beyond it. When such***
 F ***evidence are adduced the law says they should be ignored as they are regarded and treated as non issues. See Temile v. Awani 2001 12 NWLR part 728 page 726, Makwe v. Nwukor 2001 14 NWLR part 733 page 356, and Orizu v. Anyaegbunam 1978 5 SC. 21.***
 G

In converse, I am of course not unmindful of the position of the law that parties do not plead evidence but facts, see Saraki v. Society General Bank 1995 1 NWLR part 371 page 325.

However, in a case of this nature predicated on traditional his-
 H tory where particulars and specifications are required, a party is bound to plead succinctly such particulars. See First African Trust Bank Ltd. v. Partnership Investment Co. Ltd. 2001 1 NWLR part 695 page 517. Another contradiction is in the evidence of PW2, as against the averment in paragraph (4) and the evidence of the appellant himself.

The relevant evidence of PW2 reads thus:-

"I have heard of a man named Nwoko, he was the son of Elemaranya..... Nwoko and Elemaranya were of the same parents. The Plaintiff descends from Nwoko."

The nephew of the appellant, PW6 in the course of cross examination, gave the history of the land in dispute thus:- B

"The original owner of the land in dispute was the father of Nwoko named Nkudehi. Nkudehi had one son called Nwoko. Uhuakwukwa was the father of Nwokorobia. Nwokorobia was the father of Aligwekwe among other sons."

It is clear from the above that the evidence does not support the averment, in paragraph (4) of the statement of claim, and the appellant's traditional evidence. **Whereas the appellant's history started with Nwoko family as the original owner of the land in dispute, that of PW6 started with one Nkudehi (the father of Nwoko whom he described as the original owner of the land. It is in fact a deviation from the appellant's case, and the contradiction is glaring.** When one studies the evidence adduced by the appellant, one is bound to see that they have not satisfactorily proved the traditional history of the land in dispute. They are riddled with contradictions and inconsistencies, which did not assist the plaintiff in the claim of declaration of title to land. **It is a cardinal principle of law that a party who seeks a relief of an order of declaration of title to land and it is predicated on traditional history, it must plead and prove its case with cogent, credible, consistent and uncontradicted evidence. Evidence that are not consistent, but have discrepancies cannot sustain an action for declaration of title to land.** See *Onibudo v. Akibu* 1982 7 SC. 60, and *Adesanya v. Aderonmu* 2000 9 NWLR part 672 page 370. C D E F G

It is in the light of the above discussion that I endorse the finding of the Court of Appeal, which after reproducing paragraph (4) of the statement of claim reads as follows:-

"There is nothing in this paragraph or in all the paragraphs of the statement of claim to show how the family of Nwoko came about the land. Was it by deforestation, or by conquest, or by purchase? I agree with the learned counsel for the appellants that the pleading was bereft of the requisite particulars in a claim based on traditional

history.”

The learned counsel for the appellant referred to paragraphs 5, 6, 7, 8 and 9 of the statement of claim on the existence of the appellant’s boundary neighbours, descendants of Nwoko family. According to him the presence of these boundary neighbours who are descendants of Nwoko family goes to strengthen the evidence of the Appellant. He cited the case of Idundun v. Okumagba supra to wit he reproduced a holding of the court in his brief of argument, which reads thus:-

“.....proof of possession of connected land, in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner of the land in dispute, may also rank as a means, of proving ownership of the land in dispute.”

The above was not a finding as such but the restatement of one of the five ways of proving ownership of land.

“From the evidence of the Plaintiff and his witnesses and also Exhibit A it is certain that the land in dispute is surrounded by the lands of the sons of Nwokorobia or their relations except on the West where names of adjoining land owners from Nmaozu are given in Exhibit A. In the North -East the Defendants in their Exhibit B concede that the land in the possession of Akwaja-Nwokorobia’s son is on pledge but contradicted themselves by stating there under NOT IN DISPUTE. It is difficult to reconcile the two statements of the Defence on that point, more so when the Plaintiffs stand amounts to denial of the so-called pledge to Akwaja by the Defendant’s grandfather.”

It is instructive to note that one of the five ways of proving ownership of land, as encapsulated in the Idundun’s case supra reads thus:-

“.....for the provisions of Section 45 of the Evidence Act to apply, there must be an admission by the respondents, or a finding by the trial judge, that the land in dispute was surrounded by other lands belonging to the appellants. Not only was this fact not proved by the appellants there was also no admission to that effect on the part of the respondents. Further more, as the learned trial judge could not, and did not, make any finding on this crucial point, the inference under Section 45 of the evidence Act that the appellants were the owners of the disputed land could not have been

drawn.”

Indeed, in the case at hand, the learned trial judge found that the land in dispute was surrounded by the appellant's relations' lands. Before I continue I would like to examine Exhibits A and B more carefully. A careful perusal of these exhibits reveal that the land in dispute are physically the same, and both plans depict some same boundaries, like Akwaja family land and Eneremadu family land etc. The learned trial judge found the oral evidence of the plaintiff and his witnesses and the content of Exhibit A more probable and he believed them. **it was the learned trial judge who saw and heard the witnesses of both sides, so he had the singular advantage of determining their credibility vis a vis the evidence of the other parties. The prerogative of believing or not believing any witness squarely rests on a trial judge who watched the demeanour of witnesses, and the law is settled that any finding of a judge based on facts cannot and will not be interfered with by an appellate court unless the finding is perverse and is not supported by unchallenged credible evidence.** See Makinde v. Akinwale 2000 2 NWLR part 645, page 435, Fatoyinbo v. Williams 1956 SCNLR 274, Awaegbo v. Eze 1995 1 NWLR part 372, page 393, and Balogun v. Agboola 1974 1 All NLR part 2 page 66.

On the applicability of the provision of Section 46 of the Evidence Act Cap 112 Laws of the Federation of Nigeria to the instant case, I will reproduce this provision which was formerly section 45 hereunder. It reads :-

“46. Acts of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done, but also of other land so situated or connected therewith by locality or similarity that what is true as to the one piece of land is likely to be true of the other piece of land.”

The appellant in this appeal has proved that the ownership or possession of the various pieces of land surrounding the land in dispute and which form boundaries to the land, vest on the appellants' relations, with whom they share common ancestry. The appellant has also shown vide Exhibit A' that the land very next to the land in dispute is in his possession. Although the acts of possession of the land was not sat-

isfactorily established as is discussed in the earlier part of the judgment due to the discrepancies in the evidence of the appellant's evidence, the appellant has proved that the land he is farming on is contiguous to the land in dispute, and this has raised the probability that the appellant owns the land in dispute. See Kaiyaoja v. Egunla 1974 12 SC. 55. *The law is trite that civil cases are decided on balance of probability and preponderance of evidence. See Elias v. Omo-Bare 1982 5 SC. 25, and Odulaja v. Haddad 1973 11 SC. 357.*

In the light of the above discussions and reasonings I am satisfied that the appellant proved his ownership of the land in dispute vide the fifth way of proving title to land. The appellant may have failed to prove title by traditional history, which was what he predicated his case on but the evidence before the court has proved his entitlement to the land by one of the ways enunciated in the Idundun v. Okumagba case supra.. In the circumstances, I resolve this last issue partly in favour of the appellant, and ground (3) of appeal fails, whereas ground (4) succeeds.

In the final analysis the appeal succeeds, and it is hereby allowed. The judgment of the trial court is hereby affirmed and that of the Court of Appeal is set aside. I assess costs at N50,000.00 costs in favour of the appellant.

F **KATSINA-ALU JSC**

I have had the advantage of reading in draft the judgment delivered by my learned brother Mukhtar JSC in this appeal. I agree with it and, for the reasons contained therein, I too allow the appeal. I hereby affirm the judgment of the trial court. I also award =N=50,000.00 costs in favour of the appellant.

H **ONNOGHEN JSC**

The appellant instituted an action at the trial court in Imo State claiming recovery of possession of the land in dispute and injunction.

It is settled law that where a plaintiff claims the relief of recovery of possession of a piece of land, he puts his title to the said land in issue particularly where the defendant contends that he is in posses-

sion of the land on the ground that he is the owner thereof. In the instant case, the appellant did not claim declaration of title or right of occupancy to the land in dispute but recovery of possession thereof. It is the nature of the relief claimed that now puts the title of the appellant in issue in the case. The question is whether from the pleadings and evidence the appellant did establish his right to the relief of recovery of possession and injunction as claimed. The trial court held that he did while the lower court is of the view that he did not, hence the instant appeal, the issues for determination of which are stated by learned counsel for the appellant as follows:-

“1. Whether the lower court was right in holding that there was no certainty in the description of the disputed land by the Plaintiff/Respondent/Appellant evidence before the trial court.”

2. Whether the Plaintiff/Respondent/Appellant has established his ownership of the land by traditional history.”

The respondents’ counsel also submitted identical issues for determination.

On issue 1, it is clear that parties tendered survey plans of the land in dispute depicting the features therein as well as the boundaries of same. The appellant tendered exhibit A and called his boundary neighbours as witnesses. It is not alleged that the survey plan of the appellant, exhibit A is inconclusive in the sense that it left some boundaries without boundary neighbours. The fact that both parties refer to the same land by different names does not make the identity of the land uncertain particularly where the plaintiff’s claim thereto is tied to a survey plan drawn to scale by a licenced surveyor as in the instant case. In any event, the trial court was satisfied of the identity of the land in dispute as claimed by the appellant and I see nothing on record to warrant the intervention of the lower court in respect of that finding.

On the second issue, which is the kernel of the appeal, it is important to state that appellant did not set out to claim declaration of title to the land in dispute simpliciter but recovery of possession thereof. It is that claim for recovery of possession that puts the title of the appellant to the land in question in issue or dispute. Appellant may not have pleaded how his ancestor acquired the land in dispute - either by conquest, first settlement, deforestation, purchase, gift, conveyance etc etc but pleaded and gave evidence of the original

owner of the land which land later came to him by inheritance over the ages. However, ownership of or title to land may be proved in any of the following ways:-

- (i) by traditional history (evidence)
- (ii) by production of documents of title;
- B (iii) by acts of long possession and enjoyment of the land;
- (iv) by acts of a person claiming the land e.g. by selling, leasing or renting;
- (v) by proof of possession of connected or adjacent land -see
- C Idundun vs Okumagba (1976) 9-10 S.C 227; Agunbiade vs Sasegbon (1968) NMLR 223; Alade vs Awo (1975) 4 S.C 215 etc, etc.

In respect of (v) supra, the appellant pleaded and gave evidence of possession of surrounding pieces of land by members of NWOKO family, which is also the family of the plaintiff. In effect there is evidence that the land in dispute is surrounded by pieces of land owned and possessed by members of the appellant's extended family - none by the family or members of the family of the respondents who do not claim to belong to the same family with the appellant. The fact of the land in dispute being surrounded by land owned by members of the appellant's extended family is confirmed by the finding of the trial court to that effect which therefore brings into operation the provisions of section 46 of the Evidence Act, Cap 112, Laws of the Federation of Nigeria, 1990 which provides as follows:-

F "46. *Acts of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done, but also of other land so situated or connected therewith by locality or similarity that what is true as to the one piece of land is likely to be true of the other piece of land.* "

G It is therefore clear that the lower court was in error when it set aside the judgment of the trial court in respect of the claim of recovery of possession and injunction having regards to the facts of the case and the provisions of section 46 of the Evidence Act, Cap 112, Laws of the Federation of Nigeria, 1990, supra.

In the circumstance and having regards to the detailed consideration of the issues by my learned brother A.M. MUKHTAR, JSC in the lead judgment which I had the advantage of reading in draft, I agree that the appeal is meritorious and should be allowed and order

accordingly.

I abide by the consequential orders made in the said lead judgment including the order as to costs. Appeal allowe

ADEREMI JSC

The appeal here is against the decision of the Court of Appeal/ Port Harcourt Division (hereinafter referred to as the court below) delivered on 13th June 2002 in the appeal NO CA/PH/56/96:

DESMOND UCHECHI NWOGU & ORS VS ONUOHA NWOKOROBIA. The court below had, in its said decision aforesaid, set aside the decision of the trial court (the High Court of Imo State) sitting at Aboh Mbaise delivered on the 29th November, 1994. The appellant, as the plaintiff before the trial court, had claimed against the defendants before that court as follows:

“1. An order of court commanding the defendants to surrender to the plaintiff all that piece or parcel of land which is part, of Odankwu Nwokorobia and situate, in Umuahim Ikenga Eziudo in Aboh Mbaise which piece or parcel of land has been in the possession of the defendants and which the defendants have refused to surrender despite repeated demands.

2. An injunction perpetually restraining the defendant’s servants and/or their privies from further entry into the land so surrendered”.

Pleadings were filed and exchanged between the parties at the trial court. Both sides called evidence in proof of the averments in their respective pleadings sequel to the taking of counsel addresses, the trial court, in a reserved judgment delivered on 29th November 1994, the trial court found in favour of the plaintiff. Dissatisfied with the judgment of the trial court, the defendants, now respondents before us, appealed to the court below which in a unanimous decision delivered on the 13th of June 2002, allowed the appeal and set aside the decision of the trial court and consequently dismissed the plaintiff/appellant’s suit in its entirety. Being dissatisfied with the aforesaid decision of the court below, the plaintiff/appellant appealed to this court by way of a Notice of Appeal filed on the 2nd of August 2002 which carries four grounds. Distilled from the said four grounds of appeal for determination by this court, are two issues which, as set

out in the briefs of argument filed and served on the 25th of June 2008 are in the following terms;

“1 Whether the lower court was right in holding that there was no certainty in the description of disputed land by the plaintiff/respondent/appellant evidence before the trial court.

B *2. Whether the plaintiff/respondent/appellant has established the ownership of the land by traditional history.*

The respondent, for their part, have identified two issues, as well, for determination and as set out in their brief of argument filed on 4th July, 2008, they are as follows:

C *“1 Whether the appellant had by credible evidence established the identity/features of the land in dispute.*

2. Whether the appellant had established ownership over the land in dispute.”

D The two sets of issues raised are similar in all material respect. I shall take issue No 1 in each of the two briefs together and thereafter take issue No 2 in each brief together. I have read the arguments canvassed in the respective briefs of the parties. Issue No 1 in each brief relates to the certainty or otherwise of the land in dispute. Indeed, from their pleadings, the two parties joined issue as to the identity of the land. The plaintiff tendered Exhibit A - the Survey plan of the land and called witnesses including a licensed surveyor who prepared the survey plan-Exhibit A. The defendant/respondent also called evidence and tendered Exhibit B-their own survey plan. Both parties called the land in dispute by different names. The appellant called the land in dispute “ODONKWU NWOKOROBIA” while the defendants called it “UKPABI” I hasten to say that, in law, the ascription of different names by the parties to the same areas of land in dispute, even with alarming degree of imprecision, is often not detrimental to the parties case or cases as the case may be. The emphasis on which an adjudicator always insists is that the parties being ad idem as to the same areas that are being given different names for various reasons. See (1) AROMIRE VS AWOYEMI (1972) 1 ALL NCR (PT.I) 101 (2) H MAKANJUOLA VS BALOGUN (1989) 3 NWLR (PT.108) 192 and (3) SALAMI VS. GBODOOLU (1997) 4 NWLR (PT.449) 177. The learned trial judge who saw and listened to all the witnesses and before whom the two plans-Exhibits A and B were tendered held on the issue of the identity of the land in dispute inter alia:

“In Exhibit A Ojimadu’s land can be seen to the left hand side of the imaginary person facing the land in dispute. In Exhibit B, the land of Ojimadu is in the left hand side of the land in dispute surprisingly the DW 3 said he did not know of any boundary between his land and that of any other person except the 1st defendant. On that point his evidence is in conflict with Exhibit B tendered by the defendant who called him as their witness. Both Exhibits A and B depict the boundary land owner on the South -East of the land in dispute to be Ojimadu of Umuogu. The totality of the evidence on that score disqualifies the DW3 as a competent and credible witnesses.....

I would emphasis that the two dispute plans Exhibits A and B have similar physical appearance in the pertinent portion of the land in dispute that is, on the south-West.

From the foregoing, I prefer the plaintiff’s plan Exhibit A to being more authentic than that of the defendant.”

sThe learned trial judge, by the appraisal of the evidence led before him which I have reproduced above, engaged in the exercise of comparing the two plans Exhibits A and B. A trial judge before whom survey plans are tendered is on a firma terra, in a land case, to compare the boundaries and locations of the land in one plan with those on the other in his quest to arrive at a correct decision in the case. See (1) ONWUJUBA VS. OBIWU (1991) 4 NWLR (PT.183) 16 and (2) LATINWO VS. AJAO (1923) 2 SC 99.

From the findings of the learned trial judge who had the singular privilege of seeing and hearing the witnesses and exercising his right, in law, to compare the survey plans tendered, the identity of the land cannot be said to be in dispute at all. The learned trial judge was correct in his findings. The court below was in error to have held otherwise. I consequently resolve issue No 1 in the appellant brief in his favour that is I hold that the lower court erred, in law, by holding that there was no certainty in the description of the disputed land by the plaintiff/respondent/appellant. The similar issue No 1 in the respondent’s brief is hereby resolved against them.

On issue No 2 in each of the briefs of the parties which poses the question as to whether the plaintiff proved his case by traditional history to the satisfaction of the court I need not start reproducing here pieces of credible evidence of traditional history led by the plaintiff

and his witnesses which the learned trial found worthy of believing. Suffice it to say that these pieces of traditional evidence have been copiously reproduced in the lead judgment of my learned brother - Mukhtar JSC; I hereby rely on them. It is now well settled in the body of our laws that one of the five ways by which a party may prove his title to land is to adduce credible traditional evidence. See (1) ATANDA VS. AJANI (1989) 3 NWLR (PT.III) 511 (2) ALADE VS. AWO (1975) 5 SC 215 and (3) IKEGWUOLA VS OHAWUCHI (1996) 3 NWLR (PT.435) 146. I therefore resolve issue No 2 in each of the briefs in favour of the appellant.

In view of the little I have said above, but most especially for the detailed reasoning and conclusion reached in the lead judgment of my learned brother, Mukhtar JSC with which I most humbly agree I also adjudge this appeal to be meritorious.

The appeal is allowed, judgment of the court below is set aside, while I affirm the judgment of the trial court. I abide with all other consequential orders contained in the lead judgment including the order as to costs.

E

CHUKWUMA-ENEH JSC

This action has been commenced in the High Court of Abo Mbaise and the plaintiff claims against the defendants (who are sued for themselves and as representing Umu-Ogidi family of Umualim Ikenga Eziudo-Abo-Mbaise) jointly and severally for the followings:

"(1) An order of court commanding the defendants to surrender to the plaintiff all that piece or parcel of land known as and called "Odonkwu Nwokorobia" which is situate in Umualim Eziudo in Abo Mbaise which piece or parcel of land has been in the possession of the defendants, and which the defendants have refused to surrender despite repeated demands.

(2) An injunction perpetually restraining the defendants, servants and or their privies from further entry, into the lands so surrendered."

Notwithstanding that the instant claim is so couched, the case is fundamentally a claim of title to the land in dispute and the plaintiff has to establish his ownership of the same by one or the other of the five ways as so decided in IDUNDUN & ANOR. V. OKUMAGBA

(1976) 9-10 SC. 227.

Pleadings having been filed and exchanged, the matter has proceeded to hearing. At the trial each side filed a survey plan of the land in dispute. The survey plans have been tendered in evidence as exhibits A and B from the plaintiff and defendants respectively. The plaintiff has testified and called five witnesses on the whole. The trial court at the end of the day has found thus:

“All the aspects of this case and on all issues raised and canvassed by the parties, I am satisfied that the plaintiffs case yield the degree of proof required in civil cases. In other words, he has proved his case on the balance of evidence as being more probable. Accordingly, judgment is hereby entered for the plaintiff in terms of his claim for surrender of the land in dispute shown, demarcated and verged Red in Exhibit A and for (2) perpetual injunction restraining the defendants, their servants or their privies from entry into the land so surrendered.”

I have quoted the foregoing abstract of the judgment to bring out clearly the fact that the trial court has rightly tied its judgment to a survey plan Exhibit A. I now proceed to examine the circumstances.

The facts of this case are as eloquently as stated in the lead judgment of my learned brother Mukhtar JSC. The defendants dissatisfied with the judgment have appealed the same to the Court of Appeal of the Port-Harcourt Judicial Division (Court below). In a unanimous decision the court below has on 13/6/2002 allowed the appeal and thus has dismissed the plaintiff/respondent’s claim in the trial court.

The plaintiff being dissatisfied with the decision has appealed to this court on a Notice of Appeal filed on 2/8/2002 containing four grounds of appeal. The parties have in accordance with the Rules of court filed and exchanged their respective briefs of argument. The plaintiff is the appellant here and the defendants are the respondents. The appellant has in his brief of argument raised two substantive issues for determination as follows:

“(1) *Whether the lower court was right on holding that there was no certainty in the description of disputed land by the plaintiff/respondent/appellant evidence before the trial court.*

(2) *Whether the plaintiff/respondent/appellant has established the ownership of the land by traditional history.”*

The respondents in their joint brief of argument have also distilled two issues as follows:

“1. Whether the appellant had by credible evidence Established the identity/features of the land in dispute.

B 2. Whether the appellant had established ownership over the land in dispute’

C Dealing with issue one in both briefs of argument the question is whether on the state of the pleadings the parties have put the identity and the features of the land in dispute in issue in the case to warrant adducing credible evidence in proof of the same. The pleadings of both sides do so reflect. The parties joined issues on the identity of the land in dispute.

D And I go on straight away to how the trial court has dealt with the issue from p 134-137 of the Record; wherein the trial has exhaustively examined the merits and demerits of Exhibits A and B in great details in relation to the boundaries and crucial features of the land in dispute on the backdrop of the evidence of the PW1 and PW6 on the one side and DW1 and DW3 on the other side. At P. 137 four lines from the bottom of that page, the trial court after reviewing E the cases of the parties on this issue has found thus:

“I would emphasize that the two dispute plans Exhibits A and B have similar physical appearance in the pertinent portion of the land in dispute that is, on the South West.”

F At page 138 LL 1-3 the trial in conclusion after its thorough examination of the two plans Exhibits A and B side by side on the preponderance of evidence before it has said:

“From the foregoing I prefer the plaintiffs plan Exhibit A as being more authentic than that of the Defendants.”

G This pronouncement has settled the baseless challenge that the boundaries and the features of the land in dispute have not been established by credible evidence; even more so on the identity of the land in dispute The position of the respondents is further compounded by DW1, their witness as admitting in his oral testimony that - he H knows the land in dispute and its boundaries. In the light of this admission it is a sheer waste of time to contend that the identity of land in dispute is nebulous. The implications of the foregoing findings by the trial court is that the boundaries and features of the land in dispute have been clearly identified in Exhibit A - that is the plaintiff

plan, to which he wants the judgment to be tied. It further has signified that the plaintiff has discharged his burden in this regard. And as decided AWOTE V. OWODUNMI (NO.2) (1987) 2 NWLR (Pt.57) 366 - the identity of a parcel land in dispute can be established by a survey plan or by an oral description that will enable a surveyor produce a plan.” See: also OFUMI V. NGBEKE (1994) 4 NWLR (Pt.341) 746 at 747. In this case the survey plan Exhibit A has satisfied that requirement as per AWOTE’s case supra. B

The court below nonetheless has intervened to set aside the findings of fact of the trial court in this respect without stating the grounds for so doing and thus it has acted erroneously. It is trite that an appellate court as the court below should not intervene merely because it seems to it to have superior reasoning to subplant. This court has time without number warned against such temptation. C

The grounds for intervening as a matter of duty have clearly to be sat out in any case otherwise, respectfully, it (i.e. the intervention) looks capricious. Unquestionably, in this case, Exhibit A has satisfied the purpose of clearly demarcating the area of land in dispute with clearly defined boundaries and important features as to the user and ownership of the surrounding lands within the meaning of the decisions in ATE KWADZO V. ROBERT ADJEI 10 WACA 314 and SOKPUI V. AGBAZO 13 WACA 249 and the trial court has rightly tied its decision in this case to the plan, exhibit A. I therefore resolve issue one in both briefs in the appellant’s favour. D E

On issue 2, again, in both briefs which is whether the plaintiff has established his title to the land in dispute, it is basically a question of examining the pleadings and the evidence adduced in support of the averments in the pleadings. The plaintiff has inter alia pleaded traditional history, one of the five ways decided in IDUNDUN & ORS. V. OKUMAGBE (1976) 9-10 S.C. 227 for proving ownership of land in dispute in an action for declaration of title to land and in this respect the plaintiff has to prove inter alia by evidence (1) who founded the land in dispute. (2) how he founded it and (3) the succession of inheritance up to the plaintiff. F G H

The trial court has set out in meticulous details the plaintiffs traditional history from his progenitor that is one Nwoko to the plaintiff and after a careful evaluation of the case put forward by the parties on the issue the trial court has accepted and preferred the plain-

tiffs case on the traditional evidence of the parties; it has gone further to consider the plaintiffs ownership of the land in dispute under Section 46 of the Evidence Act. In this regard it has found also that the land in dispute is surrounded by the lands of the plaintiffs relations and on this it has rightly come to the conclusion that even though the plaintiff has called evidence of traditional history successfully he is not precluded from buttressing or supporting the same with acts of ownership and user of the surrounding lands under Section 46 of the Evidence Act, which provides as follows:

“Act of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done, but also of other land so situate or connected therewith by locality or similarity that what is true as to the one piece of land is likely to be true of the other piece of land.”

A plaintiff has to rely on this section to prove his claim where the land in dispute is surrounded by other lands belonging to the plaintiff or his people.

The inference that therefore has properly arisen here upon the trial court having made specific findings of facts in its judgment that the land in dispute is virtually surrounded by the lands of the plaintiffs relations i.e. they are connected by locality or as to the alternative condition of Section 46 on the other hand, that there is connection by similarity as regards acts of possession and user of the said lands to warrant the inference that what is true in this instant case as to the ownership and user of the one piece of land is likely to be true of the other piece of land.

The plaintiff has pleaded and established by evidence on balance of probabilities that the two methods of proving title to land; and the trial court has then proceeded to apply one, as it were, in support of the other. I think this situation is anticipated and supported by the classic dictum in EKPO V, ITA and to the effect that:

“.....if the evidence of tradition is inconclusive the case must rest on a question of fact” (underline is mine).

In other words, the issue has resolved itself to a question of facts as in this case the question of traditional history has been given necessary cogency and support by the facts of acts of possession and ownership of the lands surrounding the land in dispute in the instant

matter as pleaded and proved by the plaintiff. See: FASORO & ANOR. V. BABTOKU (1988) 1 NSCC VOL. 19 (Pt.I) 705.

The court below has again without stating any reason has intervened to set-aside this finding and once again erroneously and without making out any cogent ground for interfering. The court should not speculate on the reason. There can be no doubt that the plaintiff has proved his case as per his particulars of claim on the balance of probabilities based on preponderance of credible evidence as I have tried to show above. B

I, therefore, resolve issue 2 in both brief of argument in the appellants' favour. C

It is for the above reasons and much fuller reasons contained in the lead judgment of my learned brother Mukhtar JSC that I agree with him that there is merit in the appeal and that it should be allowed. I too allow the appeal and set aside the judgment of the court below and affirm the judgment of the trial court. D

I endorse all the orders contained in the lead judgment including the order as to costs.

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