

SUPREME COURT OF NIGERIA
FRIDAY 30TH JANUARY, 2015. SC. 7/2012
**CORAM:- I. T. MUHAMMAD, J. A. FABIYI, M. U. PETER-
ODILI, C. B. OGUNBIYI, K. B. AKA'AH, JJSC**

1. DUDU ADDAH
2. KAMBA ADDAH
3. GERMANE ADDAH
4. MANI ADDAH
5. DANGA ADDAH APPELLANTS
6. CHIKE ADDAH
7. TANKO YAGE
8. RODA YAGE
AND
HASSAN SAHI UBANDAWAKI RESPONDENT

LAND LAW - Title - Proof - Means of - Ownership may be proved by traditional evidence - Production of document of title - Acts of ownership - Acts of long possession - And proof of possession of adjacent land (H1)

LAND LAW - Title - Root of - Proof - Where a person relies on traditional history as his root of title - He must plead same and lead evidence to establish it - Without any missing link (H2)

LAND LAW - Title - Declaratory relief - Will not be conferred on appellants simply upon their pleadings - As there is no evidence tracing their history to their original ancestors (H3)

LAND LAW - Identity of land - Proof - Appellants having failed to prove the identity of the land in dispute - CA was right when it found that their claim cannot succeed (H4)

COURTS - Land law - Pleadings - Binding nature of - A Judge should not give evidence on identity of land - As court should not set up for parties - A case different from the one in their pleadings (H5)

PLEADINGS - Evidence - Contradictions - Parties and courts are

bound by pleadings - And any evidence at variance with pleadings must be disregarded by court (H6)

FACTS

This action was instituted by plaintiffs/appellants at the High Court of Kebbi State Zuru Judicial Division, wherein they claim against defendant/respondent for a declaration of title to disputed land, declaration that respondent's entry into the land constitutes trespass and for an order of injunction. Appellants' contention is that they inherited the land in dispute from their fathers. They however did not lead full evidence to trace the traditional history of how the land came upon them. Respondent on the other hand denied trespassing on the land. He claimed ownership of the land in dispute through inheritance from his own father many years ago.

At the trial, the parties called several witnesses in support of their cases. In his judgment, the learned trial Judge despite the missing links in the evidence adduced by appellants, gave judgment in their favour. Respondent was ordered to vacate the land. Dissatisfied with the judgment of the court, respondent appealed to the Court of Appeal Sokoto Division. The court heard the appeal and interfered with the findings of the trial court which it held as perverse. The appeal was eventually allowed. Aggrieved, appellants have appealed to Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether in consideration of the pleadings vis-à-vis the evidence led, the lower court was not in error when it held that the land in dispute was not identified by the appellants.

2. Whether in view of the evidence adduced, the lower court was not wrong to have held that the appellants failed to prove their case before the trial court."

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

LAND LAW - Title - Proof - Means of

1. Both sides of the divide are at one that it is now settled law that there are five ways of establishing title to land. This is as

set out in the case of *Idundun v. Okumagba* (1976) NMLR 200 at 210 per Fatayi-Williams, JSC (as he then was and of blessed memory) as follows:-

“As for the law involved, we would like to point out, that it is now settled that there are five ways to which ownership of land may be proved - FIRSTLY ownership of land may be proved by traditional evidence.

SECONDLY ownership of land may be proved by production of documents of title which must of course be duly authenticated in the sense that their due execution must be proved.

THIRDLY acts of ownership extending over a sufficient length of time and are numerous and positive enough to warrant the inference that the person is the true owner.

FOURTHLY acts of long possession and enjoyment of land which may be prima facie evidence of ownership of the particular piece or parcel of land or quantity of land (See: section 45 of the Evidence Act.)

FINALLY proof of possession of connected or adjacent 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.”

It is basic that each of the five ways stated above suffices to establish title to a disputed piece of land. The above stated ways of proving title to land have been restated times without number by this court, in the main. (p. 192 D)

LAND LAW - Title - Root of - Proof

2. The law is now well established and settled that where a person relies on traditional history as his root of title, the onus is on him to plead the root of title and names and history of his ancestors. He should lead evidence to establish same without any missing link.

A court has no jurisdiction to supply any missing link in a genealogical tree from progenitor to a claimant. (p. 193 D)

LAND LAW - Title - Declaratory relief

3. It should also be stated clearly that the weakness of the

defendant's case in a land suit touching on declarations, as herein, does not assist the plaintiff's case. He swims or sinks with his own case. See: Animashaun v. Olojo (1991) 10 SCNJ 143; wherein it was graphically captured that the burden of proof on the plaintiff in establishing declaratory reliefs to the satisfaction of the court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlements to the declaration by his own evidence.

It must be stressed that there was no attempt by the appellants to establish any particulars, no matter how slight, of the intervening owners of the land through whom they claimed title to the land in dispute. The failure should have been considered fatal to their claim for title to the land in dispute based on traditional evidence. The finding of the trial court in this regard was perverse as there was no evidence to show how Addah and Yage became the owners of the disputed land without tracing their history to their original ancestors. The right will not be conferred on the appellants simply upon the state of pleadings or even by admission by the respondent.

It is clear to me that the court below adopted a right approach in arriving at its conclusion in allowing the respondent's appeal before it. I feel convinced beyond peradventure that issue 2 should be, and is accordingly resolved in the negative against the appellants. (p. 193 F)

LAND LAW - Identity of land - Proof

4. It is apt to remind the parties the salient 'principle of definitive certainty'. It is that in this type of claim by the appellants, the land must be described clearly and sufficiently so that a Surveyor can, using the description, produce a plan of the land in dispute. In this matter, the appellants did not tender any plan.

The appellants' witnesses merely testified at large that the land in dispute is situated in Koga Village near Zuru Dam. In the main, the appellants have failed to establish the identity of the land in dispute clearly and with certainty.

I cannot surmise how any trained Surveyor can produce

a plan, based on the scanty evidence led by the appellants at the trial court. The court below was on a firm stand when it found that the claim of the appellants cannot succeed on this score in the prevailing circumstance. (p. 196 B)

Pleadings - Binding nature of

B

5. It has been rightly pointed out that the trial judge descended into the arena by giving a description of the boundaries of the land in dispute when there was no such evidence before him. The trial judge alluded to a surmised visit to locus in quo when there was no such visit contained anywhere in the record.

C

The court below found such a false assertion as been reprehensible. I agree with same. No judge should embark upon deliberate falsehood or go on his own voyage to furnish imaginary evidence on the identity of the land in dispute. After all, a judge should not set up for parties a case different from the one established by cold facts supplied by the parties as well as their pleadings. (p. 196 E)

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Evidence - Contradictions

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6. It is also settled that parties and the court are bound by the pleadings filed by the parties. Any evidence at variance with pleadings must be disregarded by the court. In short, the unrelated evidence adduced by appellants' witnesses must be disregarded. (p. 196 H)

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REPRESENTATION

I .M. Dikko with Amanzi F. Amanzi, for the Appellants
Tajudeen Oladoja with M. I. Komolafe; Muritala Abdul-Rasheed; G
Isyaku Abdulrahman; Yusif Liman; Abubakar Umar and Agnes Fache-
Omuya, for the Respondent

CASES REFERRED TO

Mogaji v. Cadbury Nig. Ltd. (1985) 2 NWLR (pt. 7) 393
Obineche v. Akusobi (2010) All FWLR (pt. 533) 1839
Nwokorobia v. Nwogu (2009) All FWLR (pt. 476) 1868
Obiche v. Adetona (2009) All FWLR (pt. 478) 345
Oduwole v. West (2010) 10 NWLR (pt. 1203) 598

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- Idundun v. Okumagba (1976) NMLR 200
 Adeosun v. Jibessin (2001) 11 NWLR (pt. 724) 290
 Ekpo v. Ita (1932) 11 NLR 68
 Akinloye v. Eyiola (1968) NMLR (pt. 221) 1
 Dike v. Okoloedo (1999) 5 NWLR (pt. 623) 359
 B Kodilinye v. Odu (1963) 1 All NLR 417
 Eze v. Alatise (2000) 10 NWLR (pt. 676) 470
 Adone v. Ikebodu (2001) 14 NWLR (pt. 733) 385
 Nwadiogbe v. Unadozie (2001) 12 NWLR (pt. 927) 315
 C Elias v. Omo-Bare (1982) All NLR 75

LEAD JUDGMENT BY FABIYI JSC

This is an appeal against the judgment of the Court of Appeal, Sokoto Division ('the court below' for short) delivered on the 21st day of April, 2011. Therein, the judgment of Gulma, J. delivered against the respondent and in favour of the appellants on the 31st day of January, 2000, at Zuru Division of the Kebbi State High Court of Justice, (trial court) was set aside. As well, the suit of the appellants, as plaintiffs before the trial court, was dismissed in its entirety.

E It is apt to state the relevant facts of the matter at this point. The appellants, as plaintiffs before the trial court, filed their writ of summons against the respondent. In their amended Statement of Claim, they claimed on page 12 of the records the following reliefs:-

F *"1. A declaration that the land in dispute belongs to the fathers of the plaintiffs and they inherited same from his (sic) death from him (sic).*

2. A declaration that the defendant's entry into the land is illegal and constitutes trespass.

G *3. AN ORDER of permanent injunction directing the defendant to vacate from the said land.*

4. AN ORDER of permanent injunction restraining the defendant, his heirs or privies from further entry into the said land.

H *5. AN ORDER of permanent injunction restraining the defendant, his heirs or privies from further claiming the title of the said land."*

The appellants claimed that they inherited the land in dispute from their fathers and that it was Addah who gave the land to the respondent to build his house and for cultivation.

The respondent who was not represented by counsel at the trial court filed a defence of a rather peculiar nature. Therein, he denied that he encroached on the appellants' land. He claimed ownership of the land in dispute through inheritance from his own father - Kyoti, over 70 years ago.

The learned trial judge garnered evidence from witnesses called on both sides of the divide. After he was addressed by the plaintiffs' counsel, he gave judgment in their favour and declared as follows:-

"1. That the land in dispute belongs to the fathers of the plaintiffs, who inherited same upon the death of their fathers.

2. That the defendant, his heirs, privies servants, agents, must vacate the land and must also not encroach upon the said land in future.

3. That paragraph (1) above does include the land given to defendant by the fathers of plaintiffs, which said piece is near the Dam water, at the extreme Western part of the disputed land.

4. That permanent land marks are to be erected immediately demarcating the said land in paragraph (3) from the land in paragraph (1) above. This is because the measurements of the said land in paragraph (3) are never consistent as the water level of the dam will always affect its size. Judgment is hereby entered in favour of the plaintiffs. Costs of N500 (Five Hundred Naira) awarded to the plaintiffs."

The defendant felt unhappy with the position taken by the trial court and appealed to the court below which heard the appeal. In its judgment handed out on 21st day of April, 2011, it had no difficulty in allowing the appeal. The appeal against the judgment of the trial court was allowed. While same was set aside, the suit of the appellants, as plaintiffs at the trial court, was dismissed by the court below.

The plaintiffs have decided to appeal to this court. Briefs of argument were filed and exchanged by the parties. On 27th October, 2014 when the appeal was heard, learned counsel on both sides adopted and relied on their respective briefs of argument. Learned counsel for the appellants urged that the appeal should be allowed while the learned counsel for the respondent urged that the appeal should be dismissed.

On behalf of the appellants, the two issues couched for determination of the appeal which were adopted by the respondent read

as follows:-

“1. Whether in consideration of the pleadings vis-à-vis the evidence led, the lower court was not in error when it held that the land in dispute was not identified by the appellants.

2. Whether in view of the evidence adduced, the lower court was not wrong to have held that the appellants failed to prove their case before the trial court.”

I wish to start with the consideration and the resolution of issue 2 as restated above by me.

Arguing this issue, Hassan Liman, SAN who settled the appellants’ brief of argument, maintained that the onus of proof in a suit for declaration of title to land lies squarely on the plaintiff who must succeed on the strength of his case and not on the weakness of the defendant’s case. He cited the case of *Mogaji v. Cadbury Nig. Ltd.* (1985) 2 NWLR (Pt. 7) 393.

Senior counsel maintained that there are five ways of establishing ownership of title to land in dispute. In support, he cited the case of *Obineche v. Akusobi* (2010) All FWLR (Pt. 533) 1839 at 1858-1859. He submitted that once the plaintiff can establish any of the ways of proving the ownership of the land in dispute, as set out in the case cited, it suffices for the court to grant the plaintiffs’ claim.

Senior counsel submitted that the court below misconceived the facts of the case. He referred to the case of *Nwokorobia v. Nwogu* (2009) All FWLR (Pt. 476) 1868 at 1890. He observed that the appellants’ witnesses were not cross-examined by the respondent. Learned senior counsel opined that where evidence is adjudged inconclusive, the court must rest the case on question of facts. He asserted with force that if there is any lacuna in the evidence of the appellants based on ownership of the land in dispute, it ought to be supposed to have been given the necessary cogency and support by the fact of act of possession and ownership of the adjacent land as established by PW4 and the evidence of the respondent during cross-examination.

Learned senior counsel observed that the respondent did not adduce any crucial evidence on the material issue in dispute. He felt that the appellants’ case should succeed on minimal proof. He cited the cases of *Obiche v. Adetona* (2009) All FWLR (Pt. 478) 345 at 377 and *Oduwole v. West* (2010) 10 NWLR (Pt. 1203) 598 at 621.

Senior counsel urged that this issue be resolved in favour of the appellants.

In the brief of argument settled by Tajudeen Oladoja, Esq., it was observed that the crux of the appellants' case that they inherited the land in dispute from their fathers and that the respondent is a stranger thereon was denied by the respondent as he joined issue on same. He maintained that going by the state of pleadings and the evidence led by the appellants, they relied on traditional evidence in attempting to prove their claim of ownership of the land in dispute. B

Learned counsel equally observed that there are five ways of establishing title of land. In support, he cited the case of Idundun v. Okumagba (1976) NMLR 200 at 210. He further submitted that the burden of proof lies squarely on the appellants who sought declaration of title to the land in dispute. In support, he cited Adeosun v. Jibesin (2001) 11 NWLR (Pt. 724) 290 at 306. Further, he maintained that for the appellants to obtain the declaration of title relief sought, they were obliged to establish by cogent evidence how their fathers - Addah and Yage came to own the land. C D

In support he cited Ekpo v. Ita (1932) 11 NLR 68 and Thomas v. Preston Holder 12 WACA 78. E

Learned counsel submitted that a party relying on traditional history must plead his root of title. They must show by credible evidence how their fathers got the land, either by grant, settlement or conquest. He cited, in support, the cases of Akinloye v. Eyiola (1968) NMLR (Pt.221) 1; Dike v. Okoloedo (1999) 5 NWLR (Pt.623) 359 at 370. F

Learned counsel further submitted that, in an action for declaration of title to land a plaintiff must rest on the strength of his own case and not on the weakness of the defence. He cited Kodilinye v. Odu (1963) 1 All NLR 417; Eze v. Alatise (2000) 10 NWLR (Pt.676) 470; Adone v. Ikebudu (2001) 14 NWLR (Pt. 733) 385 at 409. G

Learned counsel further stressed that unless a defendant files a counter-claim, the plaintiff has the primary duty to establish his claims by credible and consistent evidence in accordance with his pleadings. He must satisfy the court that he is entitled, on the evidence brought by him, to the declaration sought. He cited, in support, the cases of Odofin v. Ayoola (1984) 11 SC 72 and Okafor v. Idigo (1984) 1 SCNLR 481. He further reiterated the fact that the weakness of the H

defence and failure to cross-examine the appellants' witnesses will not help the appellants and the proper judgment is to dismiss the claim. In support, he cited *Nwadiogbe v. Unadozie* (2001) 12 NWLR (Pt. 927) 315.

Learned counsel finally referred to the case of *Olakunle Elias v. Chief Timothy Omo-Bare* (1982) All NLR 75. He submitted that the justices of the court below adopted a right approach in arriving at their conclusion in allowing the respondent's appeal before them. He stressed that the appellants failed to prove how they own the land in dispute as it is not enough for them to say that the land belonged to their fathers. They needed to show how their fathers came about the land in dispute.

Learned counsel urged that the second issue be resolved in the negative.

Both sides of the divide are at one that it is now settled law that there are five ways of establishing title to land. This is as set out in the case of Idundun v. Okumagba (1976) NMLR 200 at 210 per Fatayi-Williams, JSC (as he then was and of blessed memory) as follows:-

"As for the law involved, we would like to point out, that it is now settled that there are five ways to which ownership of land may be proved - FIRSTLY ownership of land may be proved by traditional evidence.

SECONDLY ownership of land may be proved by production of documents of title which must of course be duly authenticated in the sense that their due execution must be proved.

THIRDLY acts of ownership extending over a sufficient length of time and are numerous and positive enough to warrant the inference that the person is the true owner. (See: Ekpo v. Ita 11 NLR 680)

FOURTHLY acts of long possession and enjoyment of land which may be prima facie evidence of ownership of the particular piece or parcel of land or quantity of land (See: section 45 of the Evidence Act.)

FINALLY proof of possession of connected or adjacent 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.”

It is basic that each of the five ways stated above suffices to establish title to a disputed piece of land. The above stated ways of proving title to land have been restated times without number by this court, in the main.

The case of Idundun v. Okumagba (supra) was closely followed by Piaro v. Tenalo (1976) 12 SC 31. See also Balogun & Ors. v. Akanji & Anr. (1988) Vol. 19 1 NSCC 180; (1988) 1 NWLR (Pt.70) 301; Onwugbufo & Ors. v. Okoye & Ors. (1996) 1 NWLR (Pt. 422) 252, Mogaji v. Cadbury Nig. Ltd. (1985) 2 NWLR (Pt. 7) 393; Alli v. Alesinloye (2000) 6 NWLR (Pt.600) 177; Eze v. Alatishe (2000) 10 NWLR (Pt. 676) 450.

In this suit, the appellants herein, as plaintiffs before the trial court, placed reliance on traditional evidence in their bid to establish their title to the land in dispute.

The law is now well established and settled that where a person relies on traditional history as his root of title, the onus is on him to plead the root of title and names and history of his ancestors. He should lead evidence to establish same without any missing link. See: Anyanwu v. Mbera (1992) 5 NWLR (pt. 242) 386; Akinloye v. Eyiola (1968) 2 NMLR 92; Owode v. Omitola (1988) 2 NWLR (Pt.77) 413.

A court has no jurisdiction to supply any missing link in a genealogical tree from progenitor to a claimant. Refer to Odi v. Iyala (2004) 4 SCNJ 35 at 54.

It should also be stated clearly that the weakness of the defendant's case in a land suit touching on declarations, as herein, does not assist the plaintiff's case. He swims or sinks with his own case. See: Animashanu v. Olojo (1991) 10 SCNJ 143; Dantata v. Mohammed (2002) 7 NWLR (Pt.664) 176; Ekundayo v. Baruwa (1965) 2 NWLR 211; Nwokidu v. Okanu (2010) 3 NWLR (Pt.118) 362 and Dumez Nig. Ltd. v. Nwakhoba (2008) 18 NWLR (Pt. 1119) 361 at 373-374 wherein it was graphically captured that the burden of proof on the plaintiff in establishing declaratory reliefs to the satisfaction of the court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlements to the declaration by his own evidence.

The court below found that the respondent in his statement of defence, joined issue with the appellants in their statement of claim wherein they claimed ownership of the land in dispute through inheritance from their fathers.

It must be stressed that there was no attempt by the appellants to establish any particulars, no matter how slight, of the intervening owners of the land through whom they claimed title to the land in dispute. The failure should have been considered fatal to their claim for title to the land in dispute based on traditional evidence. The finding of the trial court in this regard was perverse as there was no evidence to show how Addah and Yage became the owners of the disputed land without tracing their history to their original ancestors. The right will not be conferred on the appellants simply upon the state of pleadings or even by admission by the respondent.
 See: Dumez Nig Ltd. v. Nwakhoba (supra) at pages 373-374, Olakunle Elias v. Chief Timothy Omo-Bare (supra).

The appellants had the duty to show by credible evidence how their fathers' ancestor got the land, either by grant, settlement or conquest. This, they failed to do. The court below, no doubt about it, adopted the right approach. Refer to Akinloye v. Eyiola (supra) and Dike v. Okoloedo (supra) at page 370. The court below was also right when it found that the appellants' claim must rest on the strength of their case and not on the weakness of the defence. See: Kodilinye v. Odu (supra) and Adone v. Ikebudu (supra) at page 409.

It is clear to me that the court below adopted a right approach in arriving at its conclusion in allowing the respondent's appeal before it. I feel convinced beyond peradventure that issue 2 should be, and is accordingly resolved in the negative against the appellants.

Issue 1 is '*whether in consideration of the pleadings vis-a-vis the evidence led, the lower court was not in error when it held that the land in dispute was not identified by the appellants*'.

Arguing this issue 1, senior counsel tacitly agreed that the parties joined issue on the identity of the land in dispute. He maintained that the witnesses called by the appellants testified that the land in dispute is situated in Koga Village near Zuru Dam and that the respondent did not deny same. He maintained that the trial court was

right to have acted on the evidence adduced by the appellants. The case of Yakubu v. M.W.T. Adamawa State (2006) 10 NWLR (Pt.989) 546 was cited in support.

Senior counsel maintained that it is settled that in a matter touching on declaration of title to land, the onus is on the claimant to establish the identity of the land in dispute where same is challenged. He cited the cases of Obiche v. Adetona (2009) All FWLR (Pt.478) 345 at 372; Ogun v. Akinyelu (2004) 18 NWLR (Pt.905) 362 at 385; Oduwole v. West (2010) 10 NWLR (Pt.1203) 590 at 621, Chami v. U.B.A. Plc. (2010) 6 NWLR (Pt. 1191) 474 at 496 - 497; and Nwokorobia v. Nwogu (2009) All FWLR (Pt.476) 1868 at 1895.

Learned senior counsel urged that the issue be resolved in favour of the appellants.

On behalf of the respondent, it was observed by learned counsel that none of the witnesses of the appellants gave evidence on the boundaries of the land in dispute as pleaded in paragraph 6 of the amended Statement of Claim.

Learned counsel submitted that any evidence that is not in conformity with pleadings would go to no issue. He cited Eze v. Ataise (2000) 10 NWLR (Pt. 676) 470; Egbue v. Araka (1988) 3 NWLR (Pt. 84) 598. He maintained that where a plaintiff claims for declaration and injunction, the area of the land in dispute must be properly identified in view of the injunctive order which cannot be granted in respect of an undefined area.

Learned counsel stressed that the evidence of the appellants failed to show with clarity and certainty before the trial court the boundaries of the land claimed by the appellants. He submitted that the appellants' claim ought to have been refused. He cited Lorde v. Ihyambe (1993) 3 NWLR (Pt. 280) 197 at 207 and Oke v. Eke (1982) 12 SC 218 at 246.

Learned counsel observed that the description of the land in dispute by the trial judge is different from that in the pleadings and that he referred to a visit to locus in quo when there was, in fact, no such visit in the record.

Learned counsel stressed that a case belongs to the parties and not the court. He felt that a court is not competent to make a case for any of the parties as to do so will be going against all known principles of fair hearing or fair trial. He referred to the case of Akinsumi

v. Adio (1997) 8 NWLR (Pt. 516) 277 at 292.

Learned counsel finally stressed that in view of the state of pleadings and the evidence led at the trial court, the court below, was not in error when it held that the land in dispute was not identified by the appellants. He urged that issue 1 be resolved against appellants.

B It is apt to remind the parties the salient ‘principle of definitive certainty’. It is that in this type of claim by the appellants, the land must be described clearly and sufficiently so that a Surveyor can, using the description, produce a plan of the land in dispute. See: Arabe v. Asanlu (1980) 5-7 SC 78, and
C Efetiroroje v. Okpaleke II (1991) 5 NWLR (Pt.193) 517. In this matter, the appellants did not tender any plan.

The appellants’ witnesses merely testified at large that the land in dispute is situated in Koga Village near Zuru Dam.
D In the main, the appellants have failed to establish the identity of the land in dispute clearly and with certainty.

I cannot surmise how any trained Surveyor can produce a plan, based on the scanty evidence led by the appellants at the trial court. The court below was on a firm stand when it
E found that the claim of the appellants cannot succeed on this score in the prevailing circumstance.

It has been rightly pointed out that the trial judge descended into the arena by giving a description of the boundaries of the land in dispute when there was no such evidence
F before him. The trial judge alluded to a surmised visit to locus in quo when there was no such visit contained anywhere in the record.

The court below found such a false assertion as been
G reprehensible. I agree with same. No judge should embark upon deliberate falsehood or go on his own voyage to furnish imaginary evidence on the identity of the land in dispute. After all, a judge should not set up for parties a case different from the one established by cold facts supplied by the parties as
H well as their pleadings. See: Oniah v. Onyiah (1989) 1 NWLR (Pt. 99) 514 and Ojo-Osagiev. Adonri (1994) 6 NWLR (Pt. 349) 131.

It is also settled that parties and the court are bound by the pleadings filed by the parties. Any evidence at variance with pleadings must be disregarded by the court. In short, the

unrelated evidence adduced by appellants' witnesses must be disregarded. See: Emegokwe v. Okadigbo (1973) All NLR 314 at 317; NIPC v. Thompson Organisation (1969) All NLR 134 at 138.

In short, this issue is also resolved in favour of the respondent.

I come to the final conclusion that the appeal is devoid of merit. It is accordingly dismissed as the judgment of the court below is hereby affirmed. The appellants shall pay N100,000:00 costs to the respondent.

NOTE: This appeal was heard on 27th October, 2014. It was adjourned to 23rd January, 2015 for judgment. The unanticipated strike by JUSUN members started on 5th January, 2015 and was called off on 26th January, 2015. The effect of same has affected the delivery of this judgment within the mandatory period of 90 days.

Consequently, it is hereby delivered today - 30th January, 2015.

MUHAMMAD JSC

I have had the privilege of reading in draft, the judgment just delivered by my learned brother, Fabiyi, J.S.C. I am in agreement with him in his reasoning and conclusions.

My Lords, in an action which seeks for declaration of title to land, the burden of proof of the identity and boundaries of the land in dispute is squarely on the claimant, which can be discharged either by oral evidence or by survey plan showing clearly the area to which his claim relates. It is thus, necessary for a plaintiff who claims declaration and injunction to properly and unmistakably identify the land in dispute in view of the order for injunction which cannot certainly be granted in respect of an undefined area, where he fails to prove the boundaries of the land he asserts to be in dispute or did not satisfactorily describe the dimension and locality, or the description contradicts the plan, the proper order to make is one of dismissal of the claim. See: BARUWA VS. OGUNSHOLA [1938] 4 WACA 159; OKE VS. EKE [1982] 12 SC 232; OKORIE VS. UDOM [1960] SCNLR 326. In OKE VS. EKE [Supra] it was held, inter alia:

“A long line of authority have established that a plaintiff seeking a declaration of title to a piece or parcel of land must be able to prove its identity with certainty. The test laid down in Kwadzo vs. Adjei 10 WACA [1944] page 274 still holds good today. In that case

the Court stated as follows:

“The acid test is whether a surveyor, taking the record could produce a plan showing accurately the land to which title has been given” See further: UDOFIA VS AFIA 6 WACA [1940] page 216.

B cogent was placed before the trial court to entitle the appellants to their claims. As a matter of fact, none of the [9] nine witnesses who testified for the plaintiffs gave clear evidence on the boundaries of the land in dispute as pleaded in paragraph 6 of the amended statement of claim.

C My Lords, I have noted that the learned trial judge in his Judgment tried to extend the description of the land in dispute different from what was pleaded and upon which evidence was given. Again, he made reference to a visit to locus in quo to the land in dispute.
D There is no record of the said visit to the locus in quo in the proceedings but only in the judgment. I am afraid, the learned trial judge entered into the arena, which of course, he is not entitled to do. A case before a court of law belongs to the parties and not to the court as a court is not competent to make a case for any of the parties The
E Judge is an umpire and must limit himself to what is pleaded and established by the parties before him. Otherwise, he will be accused of going against the known and well cherished principles of fair trial. See: AKINSUMI VS. ADIO [1997] 8 NWLR [part 516] 277 at page 292A.

F For the above reasons and the more detailed ones proffered by my learned brother, Fabiyi, JSC, in his Judgment, I too, find the Judgment of the court below, unassailable and cannot be faulted. The appeal lacks merit and I dismiss same. I abide by consequential
G orders made in the lead Judgment including order on costs.

PETER-ODILI JSC

H I am in agreement with the judgment just delivered by my learned brother, John Afolabi Fabiyi, JSC and to emphasis my support. I shall make some comments.

This is an appeal against the judgment of the Court of Appeal, Sokoto Division delivered on the 21st day of April, 2011 in which that Court below allowed the appeal and set aside the decision of the

Kebbi State High Court, Zuru Judicial Division presided over by Hon. Justice Zakari I. Gulma on the 31st January, 2000.

FACTS:

The facts relevant to this appeal would be gathered from the Amended Statement of Claim and they are thus:-

“WHEREOF the Plaintiffs jointly and severally claimed the following reliefs;

1. A DECLARATION that the land in dispute belongs to the fathers of the plaintiffs and they inherited same on his death from him.

2. A DECLARATION that the defendant entry into the land is illegal and constitutes trespass.

3. AN ORDER of permanent injunction directing the defendant to vacate from the said land.

4. AN ORDER of permanent injunction restraining the defendant, his heirs, of privies from further claiming title of the said land.”

At the end of the trial at the High Court, it was decided thus:-

1. “That the land in dispute belongs to the fathers of the plaintiffs, who inherited same upon the death of their fathers.

2. That the defendant, his heirs, privies, servants, agents must vacate the land and must also not encroach upon the said land in future.

3. That paragraph (1) above does not include the land given to the defendant by the fathers of the plaintiff which said piece is near the defendant the Dam Water, at the extreme Western part of the disputed land.

4. That permanent landmarks are to be erected immediately demarcating the said land in paragraph (3) from the land in paragraph (1) above. This is because the measurements of the said land in paragraph (3) are never consistent as the water level of the dam will always affect its size judgment is hereby entered in favour of the plaintiffs. Cost of N500.00 (Five Hundred Naira) awarded to the Plaintiffs.”

Aggrieved and dissatisfied by the said judgment, the Respondent herein appealed it to the Court below. After the filing of the appeal, the appellant died and with the leave of that Honourable Court granted on the 25th February, 2003, the present Respondent, Hassan Sahi Ubandawaki, was substituted for the deceased.

Learned counsel for the Appellant on the 27th October, 2014, date of hearing adopted the Appellant's Brief of Argument settled by Hassan M. Liman SAN filed on 15/3/12 and in which were formulated two issues for determination, viz:-

1. Whether in consideration of the pleadings vis-à-vis the evidence led, the Lower court was not in error when it held that the land in dispute was not identified by the Appellants? (Distilled from Ground One of the Notice of Appeal).

2. Whether in view of the evidence adduced, the Lower court was not wrong to have held that the Appellant failed to prove their case before the trial court? (Distilled from Ground Two of the Notice of Appeal)

Learned counsel for the Respondent, Tajudeen O. Oladoja adopted their Brief of Argument filed on 11/10/12 and equally adopted the issues for determination as crafted by the Appellants.

ISSUE NO.1:

Whether in consideration of the pleadings vis-à-vis the evidence led, the Lower court was not in error when it held that the land in dispute was not identified by the Appellant.

Learned counsel for the Appellant submitted that by the combined effect of paragraph 6 of the Amended Statement of Claim filed by the Appellants and the evidence adduced by the Appellants who were plaintiffs in the trial court, their claim is that the land in dispute is bounded by a river from the east and bounded by the farm of the Respondent, while at the South, it is bounded by the farm of Bodings and in the north by the farm of Dandi Kalmo. That the Respondent did not challenge or controvert the testimonies of the witnesses of the Appellants including the issue of the identity of the land in dispute and so acting on the evidence adduced by the Appellants. He cited *Obiche v Adetona* (2009) All FWLR (Pt.478) 345 at 372 - 373; *Ogun v. Ainyelu* (2004) 18 NWLR (Pt.905) 362 at 385 etc.

In response, learned counsel for the Respondent contended that it is trite law that once pleadings are ordered, filed and exchanged, the parties and the court are bound by the pleadings and so it follows that evidence must be led in accordance with the pleadings. That evidence led not in conformity with the pleadings or upon facts not pleaded would go to no issue and as in this case where the evidence led as to the identity and or boundaries of the land in dispute are not

well defined, then, the Plaintiffs cannot be said to have discharged the burden of proof since the identity of the land is in doubt. He cited *Eze v. Ataise* (2000) 10 NWLR (Pt.676) 470; *Egbue v Araka* (1988) 3 NWLR (Pt. 280) 197 at 207; *Oke v Eke* (1982) 12 SC 218 at 246.

Having stated in brief the arguments as canvassed by either side, it would be needful to recast even if in summary what the two contending parties have put across. B

For the Appellants, that the Respondent did not challenge the evidence led in respect of the identity of the land in dispute either through cross examination nor lead evidence towards denying the identity of the land as described by the Appellants. That the land in dispute is surrounded by the land of the plaintiff/appellants and their relations supported by the respondent and so the trial court came to the right conclusion that the Appellants successfully proved the act of ownership and user of the surrounding land under Section 46 of the Evidence Act. C D

From the view point of the Respondent is that in the light of the state of pleadings and the evidence adduced before the trial Court below, was not in error when it held that the land in dispute was disputed by the appellants. That the appellants failed to prove how they own the land in dispute as it is not enough to testify that the land belonged to their fathers without showing how their fathers came about the land in dispute. E

In the pleadings of the Plaintiffs at paragraphs 5 and 6 of the amended statement of claim, the plaintiffs asserted that the farm in dispute is situate at the eastern part of the Zuru Dam in Zuru Local Government Area and also that Yage's farm and the farm of Addah are one and the same as they were divided just for the purpose of inheritance. Also that the land in dispute is bounded by a river from the east and a farm of the respondent while being bounded in the South by the farm of Bodinga and in the North the farm of Dandi Kalmo. F G

However, none of the witnesses of the Plaintiffs testified on the boundaries of the land in contention as pleaded in paragraph 6 of the statement of claim. This throws up the operation of certain principles of law as regarding proof of title is sought and injunction too. It needs be said that when that situation arises, evidence must be led to conform to the pleadings and the appropriate description of the land H

or its identity clearly made either by oral description of the land or a survey plan to show the area disputed. In this instance there is no survey plan and so reliance has to be on the land being properly identified by oral evidence. In that wise, it is not enough as happened in this instance for the plaintiff without stating with clarity the area of the land to which the claim relates. That failure as in the case in hand where, what the plaintiffs proffered as description scanty without certainty then the court of trial is not in a position to make a finding favourable to the plaintiff. The situation is not assisted by the trial court importing evidence not borne out of the record such as when the learned trial judge held he came to his conclusion in view of the evidence and a visit to the locus quo which visit is not in any part of the Record nor made mention of by any of the witnesses.

For a fact the plaintiffs/appellants failed to adduce conclusive evidence of the identity of the land in dispute and so a declaration thereto would be difficult to make as the burden of proof placed on the plaintiffs has not been discharged. I refer to *Lorde v. Ihyambe* (1993) 3 NWLR (280) 197; *Oke v Eke* (1982) 12 SC 18.

Clearly, the identity of the land in dispute being doubtful, it is safe to resolve the issue against the Appellants and in favour of the Respondent.

ISSUE NO.2:

Whether in view of the evidence adduced, the Lower court was not wrong to have held that the Appellants failed to prove their case before the trial Court.

Learned Senior Advocate Hassan Liman for the Appellant submitted that it is trite that in a suit for declaration of title to land, the plaintiff must succeed on the strength of his own case and not on the weakness of the defendant's case. That there are five methods of establishing ownership to land in dispute as was held by this Court in *Obineche v Ajusobi* (2010) All FWLR (Pt.533) 1839 at 1858 - 1859. He stated that once the plaintiff has established any of the ways of proving the ownership of the land in dispute, it is sufficient for the plaintiff to succeed and entitled to the declaration by the court of the ownership to the plaintiff.

It was submitted for the Appellants that the appellants made their case that the land in dispute belongs to their fathers who gave part of the land to the Respondent but upon the death of the Appel-

lants' father, the Respondent extended and encroached beyond the boundaries of the land initially given to him without consent of the Appellants. That to discharge the onus of proof, the Appellants called witnesses whose testimonies, the Respondent failed to rebut, challenge or contradict and even in the case of PW1, PW4, PW5 and pw8, Respondent did not cross-examine. That the court should take such testimonies as admitted proof. He cited Yusuf v. Adama (2010) 5 NWLR (Pt.1188) 539. B

Learned counsel for the Appellants stated that the evidence led by the Appellants in order to prove that all but one of the houses built and being occupied by the relations of the Appellants or people who got the land through either the Appellants or their fathers and the defendant himself did not reside on the land he lives at one village called Mararaba Dako, many kilometers away from the land in dispute and also none of his relations lives on the land. He submitted that the purported reply on the complaint made by the plaintiff made by the Respondent before the Lower court contains only a general denial which does not constitute a statement of defence. That in his evidence as DW1, he told the court that his father did not tell him he was given the land in dispute as loan. He referred to Oduwole v. West (2010) 10 NWLR (Pt.1203) 598 at 621. C D E

In response, learned counsel for the Respondent contended that the Appellants relied on traditional evidence in attempting to prove their claim of ownership of the land in dispute. That it is now well settled the five different ways of establishing title to land as enunciated in *Idundun v Okumagba* (1976) NMLR 200 at 210. F

That in respect to proof of possession of connected or adjacent 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, that the Appellants had not fulfilled that burden of proof. He cited *Mogaji v Cadbury Nig. Ltd* (1985) 2 NWLR (Pt.7); *Alli v. Alesinloye* (2000) 6 NWLR (Pt.600) P.177; *Eze v Alatisie* (2000) 10 NWLR (Pt.676) 450. G

For the Respondent, it was submitted that the appellants and their witnesses merely gave scanty evidence that the land in dispute belonged to their fathers, Yage and Addah and nothing more. That since the Plaintiffs/Appellants sought declaration of title to the disputed land, the burden on them was to adduce credible, admissible, H

convincing, positive and unequivocal evidence in support of their case. He relied on *Adeosun v Jibesin* (2001) 11 NWLR (Pt.724) 290 at 306; *Ekpo v Ita* (1932) 11 NLR 68; *Thomas v. Preston Holder* 12 WACA 78.

In a claim for declaration of title to land and injunction such as B is being sought here, the onus of proof is on the plaintiffs/Appellants who have to ride to victory on the strength of their own case and cannot be based on the weakness of the defendant/respondent. This is the principle enunciated in the case of *Mogaji v. Cadbury Nigeria Ltd* (1985) 2 NWLR (Pt.7) 393.

C In achieving that discharge of the burden, the plaintiffs have five known ways or methods of establishing ownership to the land in dispute as restated in the case of *Obineche v. Ajusobi* (2010) All FWLR (Pt.533) 1839 at 1858 - 1859 which are as follows:-

D a) Proof by traditional evidence.
b) Proof by production of documents of title duly authenticated unless they are documents truly or more years old produced from proper custody.

E c) Proof by act of ownership in and over the land in dispute such as leasing, selling, making grant or farming on it or a portion thereof extending over a sufficient length of time numerous and positive enough to warrant the inference that the persons exercising such proprietary acts are the true owners of the land.

F d) Proof and by act of long possession and enjoyment of the land which prima facie may by evidence of ownership not only of the particular piece of land with inference to such acts are done, but also of other land so situated and connected therewith by locality of similarity that the presumption under Section 45 and 146 of the Evidence Act applies and the inference can be drawn that what is true of G the one piece of land is likely to be true of the other piece of land.

H e) Proof by possession of the connected or adjacent 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. See *Idundun v Okumagba* (1976) NMLR 200 at 210 per Fatayi-Williams, JSC (as he then was); *Alli v Alesinloye* (2000) 6 NWLR (Pt.600) 177; *Eze v Alatise* (2000) 10 NWLR (Pt.676) 450.

In the light of the five ways in proof of a claim to declaration of title to land in dispute and placing them in context with the case at

hand, what can be deduced offhand is that the Appellants are relying on evidence of traditional history. That produces the attendant need for the pleadings to show the root of title and the evidence proffered to trace the ancestral line of that ownership including how those ancestors came to own and possess the land thereafter passing it onto the plaintiffs. See Akinloye v. Eyilola (1968) NMLR GZ; Ohiaeri v. Akabeze (1992) 2 NWLR (Pt. 221) 1; Anabronye v Nmakache (1997) 1 NWLR (Pt.482).

On this principle of proof by way of traditional history, the Court of Appeal per Belgore JCA stated thus:

"In this case, there is no shred of evidence to show how Addah and Yage become (sic) the owners of the land in dispute. If they had inherited it, it is not shown, the person from whom they had inherited it. The law is thus established that to obtain a declaratory relief as to the right, there has to be evidence which supports an argument as to the entitlement to such a right. The right will not be conferred simply upon the state of the pleadings or by admission therein. Eke v. OKWARANYIA (2001) 6 NSCQR 239, 259".

On this onus of proof laid on the Appellants as plaintiffs by law, the court below found that the Appellants failed on that count to discharge the burden of proof and so the weakness of the defendant/respondent to cross-examine the witnesses of the plaintiffs did not enhance the loose position of the Appellants which brings to mind the dictum of Udo Udom, JSC in the case of Alhaji Adebola Olajunle Elias v Chief Timothy Omo-Bare (1982) ANLR 75 at 87 - 88 when he said:-

"If there was a land case completely starved of evidence this is certainly one. This case clearly cries to high heavens in vain to be fed with relevant and admissible evidence. The appellant woefully failed to realize that judges do not act like the oracle at Ifa, which is often engaged in Crystal gazing and thereafter would proclaim a new Oba in succession to a deceased Oba, Judges cannot perform miracle in handling of civil claim and least of all manufacture evidence for the purpose of assisting a plaintiff to win his case".

The above summation may have been intended for the situation on ground, where the Plaintiffs/Appellants failed on the preponderance of evidence to discharge the onus of proof by proffering credible and consistent evidence. In the circumstance, the Appellants

cannot take advantage of the weakness of the defence as the first part of the bargain which lay squarely at the feet of the Appellants were not taken up before the rebuttal by the respondent can be called up, see *Odojin v. Ayoola* (1984) 11 SC 72; *Kodilinye v Odu* (1963) 1 All NLR 417; *Udegbe v Nwokoafor* (1963) All NLR 417; *Efetiroroje v. Okpalefe II* (1991) 5 NWLR (Pt.193) 517 at 532.

In the prevailing circumstances, the Court below was right when it held that the appellants failed to prove their case at the trial court and taking that alongside the fuller reasoning in the lead judgment. I too dismiss the appeal as lacking in merit.

OGUNBIYI JSC

I read in draft the lead judgment just delivered by my learned brother Fabiyi, JSC and I agree that the appeal is devoid of any merit and should be dismissed.

Briefly I wish to add for emphasis that the law is trite, well settled and also entrenched that the plaintiff succeeds on the strength of his case and not on the weakness of the defence. This principle is very much applicable especially where the claim is declaratory as it is in the case at hand. Plethora of authorities are well pronounced. The implication holds true therefore that a claimant who asserts to be entitled to a relief has the onus of establishing its case without regard to the defendant's case. See *Nwadiogbu V Unadozie* (2001) 12 NWLR (Pt.727) 315.

It is a well established principle as laid down succinctly that there are five different ways of establishing title to land as enunciated in the locus classicus case of *Idundun V Okumagba* (1976) NMLR 200 at 210 per *Fatayi-Williams JSC* as he then was and of blessed memory. The five ways have been well spelt out by my learned brother in his lead judgment.

The declaration sought by the plaintiffs/appellants therefore had placed on them the burden of adducing credible, admissible, convincing, positive and unequivocal evidence in support of their case. See *Adeosun V Jibesin* (2001) 11 NWLR (Pt.724) Page 290.

As rightly submitted by the learned counsel representing the respondent, a party relying on evidence of traditional history must plead his root of title. He is in otherwords, required to show in his

pleadings and evidence who those ancestors of his are and how they came to own and possess the land and eventually passed it on to him see *Akinloye V Eyilola* (1968) NMLR 92. The appellants have the onus to plead and establish by credible evidence how their fathers got the land, either by grant, settlement or conquest.

It is a witness or witnesses that have the duty to give evidence and it does not lie within the competence of a court to assume the role of a witness. In otherwords, in a situation where a court proceeds to ascribe that role to itself, it will be tantamount to exceeding its constitutional duty of adjudication. Such role is not recognized in our judicial procedure. Put differently, a court cannot both be a witness as well as an adjudicator: The vivid description of the land in dispute by the trial court is not borne out on the record. No evidence of such was placed before the court. It is not open for a court to make out a case for a party where there is none. The trial court was enthusiastic in importing proceedings not made out before it and therefore not contained in the record. It is the record that is binding on all courts inclusive of the parties. Any other proceeding from without will have no relevance and must be discountenanced.

It follows therefore that without proper identity, there will be no subject matter properly so to say upon which the plaintiffs' claim could be based. No court can adjudicate on a non-existent claim. It would only be dwelling on speculation or a purported land. It is not within the trial court's power to identify the subject matter as it would amount to making a case for a party/plaintiff.

This will certainly occasion injustice to the other party and the court will be abdicating its duty in doing justice. The trial court in the circumstance did make out a case for the plaintiffs when it took upon itself to identify the land in the absence of any evidence adduced by the plaintiffs' witnesses.

The lower court could not have done any better but did properly set aside that decision. In the circumstance, it rightly acted within its power for purpose of doing justice. In reviewing the proceedings of the trial court, the appellate court is expected to take into consideration the entire record placed before it inclusive of the pleadings of parties, the day to day proceedings and also the judgment arrived thereat. The evidence of the witnesses' identity of the land and also the visit to the locus in quo are not borne out by the record. The trial

court flagrantly went on a frolic of its own and therefore greatly erred as rightly held by the lower court, which in its judgment acted correctly and within the law, I also endorse the decision in the same terms as my learned brother Fabiyi (JSC) in his lead judgment and dismiss this appeal.

B Appeal is hereby also dismissed by me and I affirm the judgment of the lower court. I also award costs of N100,000.00 to the respondent.

C

AKA'AH'S JSC

My learned brother Fabiyi, JSC made available to me before now, the draft of his leading judgment in this appeal. I agree with his reasoning and conclusion that the appeal has no merit and it is accordingly dismissed.

The Court of Appeal, Sokoto had in its judgment in appeal No.CA/S/53/2009 delivered on 21st April, 2011 allowed the appeal by the respondent who had appealed against the judgment of Gulma J. of Kebbi State High Court, Zuru in Suit No. KB/ZR/HC/4CV/99.

E The appellants as plaintiffs had in their Statement of Claim averred that the respondent/defendant was a stranger who came to reside in their locality and was given a piece of land by their father in Koga Village near the Zuru Dam. They pleaded the following facts in paragraphs 5 and 6 of the Statement of Claim:-

F *"5. The plaintiffs state that the farm in dispute is situate at the eastern part of Zuru Dam in Zuru Local Government within the jurisdiction of this court, and also state that Yase's farm and Addah's farm is one and same farm divided into two for the purpose of inheritance.*

6. The plaintiffs claimed (sic) that the land in dispute is bounded by a river from the east and bounded by the farm of the defendant while in the South it is bounded by the farm of Bodinga and in the North it is bounded by the farm of Dandi Kalmo.

H *The defendant denied the plaintiffs' claim and asserted in paragraphs 6, 7 and 8 of the Statement of Defence as follows:-*

6. The land is (sic) dispute in situated as mention (sic) in paragraph 5 of their defence (sic) Adda and Yage had no farm their, Adda had no farm in the land and Yages farm is situated (sic) Western side

of the land in dispute.

7. The land is (sic dispute is bounded lay (sic) a river from the East in the South is bounded by the farm of late Waima and not Bodinga as mentioned. In the North is bounded by Bodinga and in the East is bounded the lay river.

8. The land in dispute is not given to me by Adda but I inherited it from my father named Kyoti about 70 years ago.” B

At a glance it becomes obvious that the defendant also claimed inheritance of the land and denied that the boundaries of the land were same as the ones set out by the plaintiffs. C

By this state of affairs the burden fell on the plaintiffs to give a correct description of the land and lead evidence on same such that a surveyor would have no difficulty in identifying the land with certainty since no survey plan was filed with the pleadings.

The law requires the plaintiff to establish with definitive certainty the identity of the land in dispute. See Kwadzo v. Adjei (1944) 10 WACA 274; Araba v. Asanlu (1980) 5-7 C 78. It is now trite that the first duty of a claimant to a declaration of title to land is to show quite clearly the area of land to which his claim relates as no Court will grant declaration to an unidentified area. See: Udofia v. Afia E (1940) 6 WACA 216; Udeku Amala v. Udogu Modekwe (1954) 14 WACA 580. Furthermore, since the plaintiffs alleged that the defendant was a stranger and it was their father who gave the piece of land in Koga Village near the Zuru Dam to the defendant to settle on, the plaintiffs had the burden of setting out clearly by who and how the land was founded and the names of persons who had exercised acts of ownership on the land before it devolved upon them. See: Kalio v. Woluchem (1955) 1 NWLR (pt.4) 610; Alade v. Awo (1975) 4 S.C. 215. The appellants as plaintiffs failed to discharge this burden. The lower court was right to reverse the judgment of the Kebbi State High Court. I find no merit in the appeal and it is accordingly dismissed. F

I affirm the judgment of the Court of Appeal, Sokoto which set aside the decision of the High Court, Zuru, Kebbi State contained in Suit No.KB/ZR/HC/4CV/99 and dismissing the suit. The respondent is entitled to costs assessed at N100,000:00 against the appellants. H