

SUPREME COURT OF NIGERIA
FRIDAY 11TH APRIL, 2014. SC. 154/2005
CORAM:- M. MOHAMMED, J. A. FABIYI,
M. U. PETER-ODILI, M. D. MUHAMMAD,
K. M. O. KEKERE-EKUN, JJSC

ALHAJI ISIYAKU YAKUBU APPELLANT
AND	
1. ALHAJI USMAN JAUROYEL	
2. MINISTRY OF WORKS, TRANSPORT,	
LAND AND SURVEY, YOLA RESPONDENTS
3. DIRECTOR GENERAL DEPARTMENT	
OF LAND AND SURVEY, GOVERNOR'S	
OFFICE, YOLA ADAMAWA STATE	

LAND LAW - Title - Conflict - From the explanation given by PW2 - There is no contradiction amounting to a substantial disparagement of appellant and his witness (H1)

LAND LAW - Certificate of Occupancy - Wrongful issuance of - Effect - Where issued as a result of inadvertence on part of official concerned - It cannot be said to be false and fraudulent (H2)

LAND LAW - Fraud - Proof - Allegation of 1st respondent that Exhibit 1 was fraudulently obtained is of no moment - As he failed to prove same beyond reasonable doubt (H3)

LAND LAW - Title - Smaller land - Court may grant declaration over smaller area than that claimed - If the evidence before the court justifies it (H4)

FACTS

This action was instituted at the High Court of Adamawa State Yola by plaintiff/appellant, claiming for damages and seeking for an injunction to restrain 1st defendant/1st respondent from continuing to perpetuate acts of trespass on the land in dispute. Appellant's case is that the Government of the defunct Gongola (now Adamawa) State granted the piece of land in dispute to him. He obtained a Certificate

of Occupancy No. GS/5705 in respect of the land. Appellant stated that he later found 1st respondent trespassing on a portion of the land. 1st respondent's refusal to vacate the land prompted appellant to commence the action in the court.

On the other hand, 1st respondent denied most of the crucial allegations of appellant. His contention is that he applied for land sometime in 1982 and was allocated the plot of land in dispute by the State Ministry of Lands and Survey. 1st respondent alleged that the Certificate of Occupancy held by appellant was fraudulently obtained. At the trial, the parties testified for themselves and called witnesses in support. At the end of the trial, the court dismissed appellant's claims on the basis that his evidence and that of his witness were conflicting and that the Certificate of Occupancy issued to appellant was fake. Aggrieved, appellant appealed to the Court of Appeal Jos Division. By a majority decision, the court dismissed the appeal and upheld the decision of the trial court. Not yet satisfied, appellant appealed to the Supreme Court.

ISSUES FOR DETERMINATION

"ISSUE NO. 1

Could it truly be said that there were material conflicts in the evidence adduced by the appellant and his witness to have made the Court of Appeal affirm the decision of the trial court?

ISSUE NO. 2

Was the Court of Appeal right to have endorsed the finding of the trial court that the Certificate of Occupancy was fake, false and fraudulent when the respondents admitted having issued the Certificate to the appellant?

ISSUE NO. 3

Was the appellant entitled to the land measuring 6,149 square metres? And if not, was the Court of Appeal not wrong to have denied appellant the smaller portion of land to which the 2nd respondent admitted as having been allotted to the appellant?

HELD (Unanimously allowing the appeal in part per

FABIYI JSC)

LAND LAW - Title - Conflict

1. The point should be made here that the evidence adduced by P.W.2 was essentially explanatory rather than contradictory. If the evidence is properly appraised as it ought to be, it is clear that P.W. 2 gave evidence that the land allocated to the plaintiff was re-allocated for policy reason. He maintained that the 1983 survey map superseded that of 1978 upon which plaintiff's title was issued. The latter survey map divided the land into two, one was given to the plaintiff and the other to the 1st defendant/respondent. From the explanations given to the alleged conflict, contradictions do not persist as they tend to disappear into oblivion. It is basic that contradictions must amount to substantial disparagement of the witnesses. I cannot surmise any real contradiction which amount to a substantial disparagement of the appellant and his witness - P.W.2. The re-allocation made for policy reason changed the equation; so to say. The respondents who harped on the sizes of plots can hardly be heard to complain as the appellant was not to blame. It is the 2nd and 3rd respondents who should clear the position of things as created by them. I resolve this issue in favour of the appellant. (p. 3556 D)

LAND LAW - C of O - Wrongful issuance of - Effect

2. With due diffidence, I should say it again that a Certificate of Occupancy issued as a result of mistake or inadvertence on the part of official concerned cannot and should not be said to be fake, false and fraudulent.

From the tones of the above correspondence between officials of the 2nd and 3rd respondents touching on Exhibit 1, can it be said that it was not issued to the appellant or that there is anything fraudulent about its issuance? I think not. All that I am trying to say is that Exhibit 1 has not been proved to be fake, false or fraudulent by the 2nd and 3rd respondents. They have not said so. It does not lie in their mouths to say so from their conduct and records - which depict in clear terms the contrary position. (pp. 3558 G/3560 D)

LAND LAW - Fraud - Proof

3. I should still note it, however, that the 1st respondent

pleaded in paragraph 10 of his statement of defence that Exhibit 1 was fraudulently obtained. Apart from the fact that he did not furnish the particulars of the alleged fraud, he did not proffer any evidence in respect of same. It is the law that the averment should be regarded as abandoned.

B Let me develop this point further. Allegation of fraud must be proved beyond reasonable doubt. Such must not leave room for speculation. It is proof in the realm of probability and not fantastic possibility that is required.

C Standard of proof for commission of crime in civil cases as alleged herein is the same as in criminal cases.

I have said it before but I wish to further reiterate it that fraud requires a higher degree of probability in its proof. It must be pleaded with particulars adequately supplied. A party alleging fraud must discharge the onus of proof to the satisfaction of the court.

E The 1st respondent who alleged fraud herein flew it in the air. Same was not attended by particulars. There was no shred of evidence adduced in support of same. As the allegation of fraud made by the 1st respondent failed to take off, it did not hit the target.

I resolve this issue in favour of the appellant and against the respondents. (p. 3560 F)

F LAND LAW - Title - Smaller land

4. It is settled law that in a claim for declaration of title to land as herein, the court may grant declaration over a smaller area than that claimed if the evidence before the court justifies it.

G In sum, I also resolve this issue in favour of the appellant as well.

H There is no doubt about it that the appellant, as a victim of circumstance dictated by the alleged 'policy decision' is now confined to No. 7 Mamiso Road, Mubi. Under the doctrine of 'Ubi jus ibi Remedium', (where there is a proven right, there is a remedy) he cannot be allowed to go away empty handed. He should be issued with the said Certificate of Occupancy the P.W.2 stated they were about to issue to him in respect of No. 7 Mamiso Road, Mubi before the court action commenced.

This appeal is hereby allowed in part. The order of dismissal of the appellant's claim in its entirety by the trial court as affirmed by the court below is hereby set aside. Same is substituted with an order limiting the declaration and injunction sought by the appellant to the piece of land known and called No. 7 Mamiso Road, Mubi. (p. 3561 H)

B

REPRESENTATION

N. A. Ibrahim, for the Appellant

R. C. Emem, for the 1st Respondent

U. V. Obi with M. A. Sanusi, for the 2nd and 3rd Respondents

C

CASES REFERRED TO

Ohiwerei v. Okoson (2003) 11 NWLR (pt. 832) 463

Audu v. Guta (2004) WLA (pt. 864) 463

Okochi v. Animkwai (2003) 2 SCNJ 260

Odofin v. Oni (2001) 1 SCNJ 130

Adekunle v. Rockview Hotel Ltd. (2004) FWLR 1037

Usenfowokan v. Salami (1969) NMLR 77

Jack v. White (2001) 3 SCNJ 55

Olujinle v. Adeagbo (1985) 2 NWLR (pt. 75) 238

Nwobodo v. Onoh (1984) 1 SCNLR 1

Omoboriowo v. Ajasin (1984) 1 SCNLR 108

Famuroti v. Agbeka (1991) 5 NWLR (pt. 189) 1

Jules v. Ajani (1980) 5-7 SC 96

George v. Dominion Flour Mills Ltd. (1963) All NLR 70

Aina v. Jinadu (1992) 4 NWLR (pt. 233) 91

Omoriegie v. Aiwerioghene (1994) 1 NWLR (pt. 321) 488

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STATUTE REFERRED TO

Evidence Act Cap 112 LFN 1990, ss. 132, 138

LEAD JUDGMENT BY FABIYI JSC

This is an appeal against the majority decision of the Court of Appeal Jos Division (the court below) delivered on 27th day of January, 2005. Therein, the judgment of Gwam, J. of Adamawa State High Court, Yola delivered on 13th day of June, 1995 in which the appellant's claim was dismissed in its entirety, was affirmed by the

H

court below.

It is apt to state the facts leading to this appeal briefly. The appellant as plaintiff at the trial court, maintained that he was granted a piece of land measuring 6,149 square metres by the defunct Gongola State Government (now Adamawa State) at Mubi GRA covered by Certificate of Occupancy No. GS/5705, marked by concrete beacons Nos. D1470, D1476, D1475 and D1470A. He maintained that when he went to the land in a bid to fence it, he discovered that some of the beacons were missing. He wrote to the Ministry of Land and Survey but got no response. He subsequently visited the land again and found the 1st defendant/respondent's workers on a portion of the land working. He told them to stop working. The 1st defendant/respondent refused and claimed that he had a right to the parcel of land.

The plaintiff filed his suit originally against the 1st defendant. In his statement of claim, he sought for an order of injunction to restrain the 1st defendant from continuing to perpetuate his acts of trespass and claimed N40,000.00 as damages.

The 1st defendant denied most of the crucial allegations of the plaintiff. He maintained that he applied for land in 1982 and was allocated the plot of land in dispute by the Ministry of Lands and Survey, Yola. He asserted that the Certificate of Occupancy held by the plaintiff was fraudulently obtained.

Before the trial court, the appellant testified and called PW.2, an official of the Ministry of Lands and Survey. He then applied to join the 2nd and 3rd defendants. As well, he also filed an application to amend his statement of claim. Therein, he claimed declaration that he is the titular owner of the piece of land covered by Certificate of Occupancy GS/5705 at Mamiso Road, Mubi, perpetual injunction to restrain the defendants and N40,000 against the 1st defendant for trespass. His applications were granted. The stated new parties filed their joint statement of defence and the trial continued. The defendants called two witnesses including the 1st defendant in person.

At the conclusion of the trial, the trial judge delivered his judgment in which he dismissed the claims of the plaintiff in its entirety, basically on the grounds that the evidence of the plaintiff and his witness was conflicting and that the Certificate of Occupancy issued to him *'was false, fake and counterfeit'*. The plaintiff felt unhappy

with the stance of the trial court and appealed to the court below which heard the appeal and dismissed it. By a majority decision, the judgment of the trial court was upheld. The appellant has decided to further appeal to this court with the leave granted him on 17th May, 2006.

On 3rd February, 2014 when the appeal was heard, N. A. Ibrahim, learned counsel who appeared for the appellant adopted the brief of argument filed on 21st March, 2007 as well as the Reply brief to the 1st respondent's brief filed on 24th April, 2013. He urged that the appeal be allowed.

R. C. Emem, learned counsel for the 1st respondent adopted the brief filed on 29th June, 2009 but deemed filed on 18th February, 2013. He urged the court to dismiss the appeal. In the same vein, U. V. Obi, learned counsel for the 2nd and 3rd respondents adopted the brief filed on 28th January, 2014 but deemed regularly filed on 3rd February, 2014. After withdrawing arguments in paragraph 4.32 at pages 14-15 of the stated brief, he urged the court to dismiss the appeal.

On page 2 of the appellant's brief of argument, three issues were formulated for determination; as follows:-

“ISSUE NO. 1

Could it truly be said that there were material conflicts in the evidence adduced by the appellant and his witness to have made the Court of Appeal affirm the decision of the trial court?

ISSUE NO. 2

Was the Court of Appeal right to have endorsed the finding of the trial court that the Certificate of Occupancy was fake, false and fraudulent when the respondents admitted having issued the Certificate to the appellant?

ISSUE NO. 3

Was the appellant entitled to the land measuring 6,149 square metres? And if not, was the Court of Appeal not wrong to have denied appellant the smaller portion of land to which the 2nd respondent admitted as having been allotted to the appellant?

On pages 3-4 of the 1st respondent's brief of argument, three issues were also decoded for determination. They read as follows:-

“(1) Whether the Court of Appeal was right in upholding the findings of the learned trial judge that there were material conflicts in

the evidence of P.W.1, plaintiff/appellant and PW 11.

(2) *Whether the Court of Appeal was right in upholding the findings of the learned trial judge that the certificate of occupancy-exhibit 1 was fake, false and fraudulent in view of the evidence before the court.*

B (3) *Whether the Court of Appeal was justified in affirming the judgment of the trial court that dismissed the claim of the plaintiff/appellant in its entirety and without granting him title in respect of a smaller piece of land.”*

C On page 5 of the 2nd and 3rd respondents’ joint brief of argument, four issues were distilled for determination of the appeal. They read as follows:-

“(1) *Whether the court below was not right to have affirmed the decision of the Hon. Trial Judge that the evidence of the appellant’s D witnesses are not only conflicting but are diametrically opposed to each other.*

(2) *Whether going by the evidence adduced before the trial court the court below was not right to have affirmed the decision of the trial court which held that the Certificate of Occupancy tendered E by the appellant was fake, false and fraudulent.*

(3) *Whether the court below was not right to have affirmed the decision of the trial court that the appellant WAS NOT entitled to a parcel of land measuring 6,149 square metres situate at Mamiso F Road.*

(4) *Whether the court below was not right in refraining from making a declaration of title in favour of the appellant for the portion of land, though smaller than what the appellant had claimed, but which appeared to have been established.”*

G The issues formulated on behalf of the parties are similar in their essence and purport. I shall employ the issues formulated on behalf of the appellant in the determination of the appeal.

H Appellant’s issue No. 1 is whether it could be said that there were material conflicts in the evidence adduced by the appellant and his witness to have made the court below affirm the decision of the trial court.

Learned counsel to the appellant set out relevant portions of the evidence adduced by the appellant as P.W. 1 as well as that of his witness - P.W. 2. He submitted that the evidence of P.W. 2 was essen-

tially explanatory rather than contradictory. He submitted that where explanations have been given to an alleged conflict or discrepancy, there cannot be said to be any material contradictions. He cited the case of *Ohiwerei v. Okoson* (2003) 11 NWLR (Pt. 832) 463 at 491 wherein it is lucidly stated that ‘contradictions must amount to a substantial disparagement of the witnesses’. He asserted that there are no material conflicts in the evidence of the appellant and his witness - PW.2. B

At this point, it is of moment to reproduce the evidence upon which the above submissions were based, relied upon by the court below to affirm the trial court’s decision. The appellant, as PW.1, adduced evidence and said, inter alia - C

“I applied for land in 1982. The land was granted to me. The land is situated in GRA Mubi, Mamiso Road. I was given a Certificate in 1988, a Certificate of Occupancy statutory No. GS/5705— After I was granted the Certificate of Occupancy, I wanted to fence the land but I discovered that some of the beacons were missing. I then wrote to the Ministry of Lands and Survey, Yola. I did not get a reply from the Ministry of Lands Yola. To my dismay I found the defendant and other persons working on the land. I asked them to stop working on my land but the defendant refused saying that it was the Ministry of Lands that gave him the land.” E

The evidence of the plaintiff’s witness to wit - PW. 2 goes as follows inter alia -

“I know the plaintiff and the defendant. The plaintiff is one of our numerous tenants. He came to apply for a piece of land sometime in 1983 and was duly allocated one at GRA Mubi and the documents were processed and sent to Yola for processing. A form was prepared from Mubi, that a plot measuring 73 metres x 40 metres giving a total of 2,920 square metres plot No. 7 Mamiso Road was duly processed at the Headquarters. After processing, a Certificate of Occupancy in our Zonal Office Mubi for their record it was then discovered that the title Deeds recited in the Certificate of Occupancy was reading a different thing from 2,920 square metres to 6,149 square metres.” F

He further said as follows:-

“I see Exhibit 1 (Certificate of Occupancy) it does not represent the parcel of land granted to the plaintiff.” H

There is another document prepared in 1983 which is current and genuine. The Survey plan used by the plaintiff was prepared in 1978. It has been superseded. The 1983 title Deed divided the land into two, one was given to the plaintiff and the other to the defendant. The plots demarcated in 1978 was (sic) too large. The politicians demanded Lands in GRA. After the grant of 1978 were made. It was a policy decision to accommodate the Mubi people and the land was re-allocated."

Learned counsel to the 1st respondent, on his part, seriously contended that the evidence of the plaintiff/appellant and his witness - P.W. 2 seriously contradict each other. He maintained that while appellant claimed title to 6,149 square metres as in Exhibit 1, P.W. 2 said he was entitled to 2,920 square metres and that no Certificate was made out to him. He cited *Shaba Audu v. Jubril Guta* (2004) WLA (Pt. 864) 463 at 481; *Okochi v. Animkwai* (2003) 2 SCNJ 260 at 270; *Odojin v. Oni* (2001) 1 SCNJ 130 at 144.

Learned counsel for the 2nd and 3rd respondents made similar submissions as canvassed on behalf of the 1st respondent.

The point should be made here that the evidence adduced by P.W.2 was essentially explanatory rather than contradictory. If the evidence is properly appraised as it ought to be, it is clear that P.W. 2 gave evidence that the land allocated to the plaintiff was re-allocated for policy reason. He maintained that the 1983 survey map superseded that of 1978 upon which plaintiff's title was issued. The latter survey map divided the land into two, one was given to the plaintiff and the other to the 1st defendant/respondent. From the explanations given to the alleged conflict, contradictions do not persist as they tend to disappear into oblivion. It is basic that contradictions must amount to substantial disparagement of the witnesses. See: Ohiwerei v. Okoson (supra) at page 491 cited by learned counsel to the appellant. I cannot surmise any real contradiction which amount to a substantial disparagement of the appellant and his witness - P.W.2. The re-allocation made for policy reason changed the equation; so to say. The respondents who harped on the sizes of plots can hardly be heard to complain as the appellant was not to blame. It is the 2nd and 3rd respondents who should clear the position of things as created by them. I

resolve this issue in favour of the appellant.

Issue No. 2 is whether the court below was right when it endorsed the finding of the trial court that the Certificate of Occupancy was fake, false and fraudulent when the respondents admitted having issued the Certificate to the appellant.

Learned counsel for the appellant submitted that the court below was wrong when it endorsed the finding of the trial court that the Certificate of Occupancy was fake, false and fraudulent. He further maintained that the evidence of P.W.2, D.W.2 and official communication contained in Exhibit 7 do not support the assertion that Exhibit 1 is fake, defective or not genuine. He felt that the authenticity of Exhibit 1 was clearly established by the appellant. He submitted further that P.W.2 and D.W.2 gave cogent evidence that the said Certificate of Occupancy was duly issued to the appellant by their office. He observed that D.W.2, apart from his testimony, produced and tendered Exhibits 5 and 7 both of which carried identical information with Exhibit 1.

Learned counsel further reiterated that the evidence of both P.W.2 and D.W.2 leaves no doubt whatsoever that Exhibit 1 is authentic as their evidence have been corroborated and supported by the record.

Learned counsel for the appellant further submitted that the 1st defendant/respondent who pleaded fraud in paragraph 10 of his statement of defence failed to furnish particulars contrary to the rules of pleadings and did not adduce evidence to buttress same. He observed that pleadings do not amount to evidence. He submitted that since no evidence was led by the 1st defendant in support of paragraph 10 of his statement of defence the averment should be regarded as abandoned. He cited the case of Adekunle v. Rockview Hotel Ltd. (2004) FWLR 1037 at 1051. He equally opined that the 2nd and 3rd respondents did not plead fraud and as such, they cannot lead evidence on same. He cited the case of Oyebisi Afolabi Usenfowokan v. Salami (1969) NMLR 77 in support.

Learned counsel for the 1st respondent maintained that the evidence that support the assertion of fraud emanated from P.W.2 who said the land allocated to the appellant was 2,920 square metres and not 6,149 square metres. He cited the case of Jack v. White (2001) 3 SCNJ 55 at 68.

Learned counsel for the 2nd and 3rd respondents maintained that from the evidence adduced before the trial court, the court below was right to have affirmed the decision of the trial court that the Certificate of Occupancy tendered as Exhibit 1 by the appellant was fake, false and fraudulent. He observed that P.W.2 said Exhibit 1
 B does not represent the parcel of land granted to the plaintiff/appellant as the land allocated to him is 2,290 square metres and not 6,149 square metres claimed by him in Exhibit 1. He urged that the decision of the court below should be affirmed on this point.

C In respect of this crucial issue, it is apt to state it right away that the 2nd and 3rd defendants/respondents did not deny making Exhibit 1. The witnesses merely allude to mistake or inadvertence on their part. A Certificate of Occupancy issued as a result of mistake or inadvertence on the part of the official concerned cannot, with adequate reasoning, be said to be fake, false and fraudulent. This is more so as no fraudulent intent has been traceable to the door-step of the appellant. The court below, on this point, found as follows:-

"I believe these confusion arose from the action or inaction of the 2nd and 3rd respondents, for as can be read from the reproduced portion of P.W.2's evidence supra the respondents discovered their mistake after Certificate of Occupancy (presumably Exhibit 1) was issued to the appellant, and they had sent a copy of it to their zonal office in Mubi. It was at that stage that they realized the mistake in the title deeds. According to this witness the latest title deed was the one of 1983, not 1978. But then, Exhibit 1 bears 23rd of November, 1988, about five years after the review, then who is to suffer for this inadvertence or oversight? It seems it is the appellant who knew nothing about what was going on in the land offices."

G ***With due diffidence, I should say it again that a Certificate of Occupancy issued as a result of mistake or inadvertence on the part of official concerned cannot and should not be said to be fake, false and fraudulent.***

H Let me further say it that the official records of the 2nd and 3rd respondents as contained on pages 145 and 148-149 of the record of appeal point to the direction that Exhibit 1 was issued to the appellant in the normal way of doing same. The said page 145 reads as follows:-

"Ref. No....."

*Ministry of Lands and Survey,
Zonal Office,
Mubi.*

24th October, 1989

*The Director-General
Ministry of Lands and Survey,
PMB 2119,
Yola.*

B

(ATTENTION-CHIEF LANDS OFFICER)

*RE-STATUTORY RIGHT OF OCCUPANCY IN RESPECT OF ALH C
ISHAYAKU A. YAKUBU - GS/5705*

*We refer to your letter No. GS/MLS/LAN/830/1/23 of 18th
September, 1989 and I wish to inform you that the Certificate of
Occupancy No. GS/5705 issued to one Alhaji Ishayaku A. Yakubu on
the 25th day of November, 1989 overlaps property No. GS/7261 D
and property No. GS/7208, belonging to one Sali Alh. Yunusa and
Alh. Usman Jauroyel respectively.*

*2. You may wish to withdraw the Certificate of Occupancy No.
GS/5705 issued to avoid any conflict in the area.*

(MICAH SAMBO)

E

For: ZONAL OFFICER

MUBI.”

*The relevant portions of the reply to the above letter at pages
148-149 of the record of appeal read as follows:-*

F

“Ref. No.....

*Ministry of Land and Survey,
PMB 2119,
YOLA.*

12TH January, 1990

G

*The Zonal Officer,
Ministry of land and Survey,
Zonal Officer,
Mubi.*

FOR THE ATTENTION OF LAND OFFICER

H

*RE-STATUTORY RIGHT OF OCCUPANCY IN RESPECT OF
ALH. ISHAYAKU A. YAKUBU GS/5705*

*With reference to your letter No. CER/9/2026/Vol. 1/17 of 24th
October, 1989.*

2. From available records this items GS/5705/Lan. 8307 is not in conflict with any mentioned items i.e. GS/7261/Lan/10207 or GS/2708/Lan/10171.....

5. It should be noted that GS/5707/Lan. 8307 is described as Plot No.7 Mamiso Road NEP87 and so demarcated by beacons
B No.D14761, D1475, D1470A and D1470.

6. From all available records these three plots are different as per site plan or any description contained in all the relevant files.

7. Only GS/5705/Lan.8307 which has collected Certificate the
C rest are yet to settle their bill.

8. The Area officer should be advised to go through the records of allocation properly and to allocated (sic) an alternative plot to GS/7208/Lan.10171 where he is convinced that plot No.5 Mamiso Road does not exist please.

D 9. Attached all relevant files for your inspection please.
(DIO DENNIS)
For: DIRECTOR-GENERAL”

**From the tones of the above correspondence between officials of the 2nd and 3rd respondents touching on Exhibit
E 1, can it be said that it was not issued to the appellant or that there is anything fraudulent about its issuance? I think not. All that I am trying to say is that Exhibit 1 has not been proved to be fake, false or fraudulent by the 2nd and 3rd respondents. They have not said so. It does not lie in their mouths to say so
F from their conduct and records - which depict in clear terms the contrary position. See: Olujinle v. Adeagbo (1985) 2 NWLR (Pt. 75) 238.**

**I should still note it, however, that the 1st respondent
G pleaded in paragraph 10 of his statement of defence that Exhibit 1 was fraudulently obtained. Apart from the fact that he did not furnish the particulars of the alleged fraud, he did not proffer any evidence in respect of same. It is the law that the averment should be regarded as abandoned. See: Adekunle v.
H Rockview Hotel Ltd. (supra) at 1051.**

Let me develop this point further. Allegation of fraud must be proved beyond reasonable doubt. Such must not leave room for speculation. It is proof in the realm of probability and not fantastic possibility that is required. See: Nwobodo v. Onoh

(1984) 1 SCNLR 1 at 27-28; Omoboriowo v. Ajasin (1984) 1 SCNLR 108; Section 138 of Evidence Act, Cap 112 LFN 1990.

Standard of proof for commission of crime in civil cases as alleged herein is the same as in criminal cases. See: Famuroti v. Agbeka (1991) 5 NWLR (Pt. 189) 1 at 13 where this court held that where the plaintiff alleged that the thumb impression on Exhibit A, the basis of the case was forged, same must be proved beyond reasonable doubt. See also Jules v. Ajani (1980) 5-7 SC 96 at 116. B

I have said it before but I wish to further reiterate it that fraud requires a higher degree of probability in its proof. It must be pleaded with particulars adequately supplied. See: George v. Dominion Flour Mills Ltd. (1963) All NLR 70 at 77; Aina v. Jinadu (1992) 4 NWLR (Pt. 233) 91 at 106. **A party alleging fraud must discharge the onus of proof to the satisfaction of the court.** See: Omoregie v. Aiwerioghene (1994) 1 NWLR (Pt. 321) 488 at 499. C D

The 1st respondent who alleged fraud herein flew it in the air. Same was not attended by particulars. There was no shred of evidence adduced in support of same. As the allegation of fraud made by the 1st respondent failed to take off, it did not hit the target. E

I resolve this issue in favour of the appellant and against the respondents.

The 3rd and last issue of the appellant, to my mind, is whether the appellant was entitled to the smaller portion of land to which the 2nd respondent admitted as having been allotted to him. F

The plot of land is No. 7 Mamiso Road, Mubi as stated in the letter of 12th January, 1990; part of which is reproduced above. According to D.W.2, it is a piece of land measuring about 2,920 square meters in Mubi GRA. It is an identifiable and certain piece of land. PW.2, D.W.1 and D.W.2, all agreed on the identity of the land in dispute. In the case of Ajide Araba v. Ogunbiyi Asanlu (1980) 5-7 SC 78 at 85, this court per Idigbe, JSC stated it pungently that it is settled that where there is no difficulty in identifying the land in dispute a declaration of title may be made without it being based on a plan. See: also Odofin v. Oni (2001) 1 SCNJ 130 at 144. G H

It is settled law that in a claim for declaration of title to land as herein, the court may grant declaration over a smaller

area than that claimed if the evidence before the court justifies it. See: Sogunle & Ors. v. Akerele & Ors (1967) NMLR 68; Ajide Araba v. Ogunbiyi Asanlu (supra) also reported as (1980) 5-7 SCNJ 78 at 85, Ezeaka Bekwe v. Emenike (1998) 9 SCNJ 58 at 73; all cited by appellant's counsel and to the point.

B In sum, I also resolve this issue in favour of the appellant as well.

There is no doubt about it that the appellant, as a victim of circumstance dictated by the alleged 'policy decision' is now confined to No. 7 Mamiso Road, Mubi. Under the doctrine of 'Ubi jus ibi Remedium', (where there is a proven right, there is a remedy) he cannot be allowed to go away empty handed. He should be issued with the said Certificate of Occupancy the P.W.2 stated they were about to issue to him in respect of No. 7 Mamiso Road, Mubi before the court action commenced.

This appeal is hereby allowed in part. The order of dismissal of the appellant's claim in its entirety by the trial court as affirmed by the court below is hereby set aside. Same is substituted with an order limiting the declaration and injunction sought by the appellant to the piece of land known and called No. 7 Mamiso Road, Mubi.

Each party should bear his/its own costs in the prevailing circumstance.

F _____

MOHAMMED JSC

The Appellant in this appeal was the plaintiff at the trial High Court of Mubi of the defunct Gongola State, now Adamawa State where on 9th July, 1991, he filed his action against the 1st Respondent who was the only Defendant and claimed the following reliefs -

1. An injunction to restrain the Defendant or his servants, agents and privies from continuing to perpetuate the act of trespass on the Plaintiff's land.
- H 2. The sum of N40,000.00 only as special and general damages.

After the exchange of pleadings between the plaintiff and the Defendant, the case proceeded to hearing. The Plaintiff and the only witness called by him gave their evidence before the trial Court. The

learned Counsel to the Plaintiff then brought an application to join the 2nd and 3rd Respondents in this appeal as the 2nd and 3rd Defendants to the action. In the course of the hearing, the three Defendants called only two witnesses but brought in 7 documents as exhibits. At the end of the hearing, the learned trial Judge dismissed the plaintiff's action against the Defendants. Part of this judgment at page 63 of the record of appeal reads -

"A proper reading of the evidence of P.W.2 and D.W.2 will show that a particular parcel of land measuring 6149 square metres situate and lying at G.R.A. Mubi was never approved or allocated to the Plaintiff by the competent authority contrary to his contention. It follows that Exhibit 1 is not genuine but fake, false or counterfeit.

It is clear from the foregoing that the Plaintiff has failed to make out the case he had embarked upon and in my view his claims must be dismissed for lack of merit."

Dissatisfied with this judgment, the plaintiff appealed against it to the Court of Appeal Jos Division which after the hearing of the appeal, in a split judgment of 2 to 1, dismissed the plaintiff's now the Appellant's appeal on 27th January, 2005. Part of the lead judgment agreed with the trial Court that the evidence in support of the Plaintiff/Appellant's case was riddled with contradictions and inconsistencies and therefore not reliable and credible to result in finding for the Appellant/Plaintiff. The same lead judgment at pages 230-231 however, blamed the 2nd and 3rd Defendants/Respondents for the contradictions and inconsistencies in the evidence in support of the Appellant's case by observing -

"I believe the confusions arose from the action or inaction of the 2nd and 3rd Respondents, for as can be read from the reproduced portion of PW2's evidence supra the Respondents discovered their mistakes after a Certificate of Occupancy (presumably Exhibit 1) was issued to the Appellant and they had sent a copy of it to their Zonal Office in Mubi. It was at that stage that they realized the mistake in the title deeds. According to this witness the latest title deed was the one of 1983, not 1978. But Exhibit 1 bears 23rd of November, 1988, about five years after the review, then who is to suffer for this inadvertence or oversight? It seems it is the Appellant who knew nothing about what was going on in the land office."

It is against this majority judgment dismissing his appeal that

the Appellant is now before this Court on a further appeal with 4 grounds of appeal from which the following 3 issues were distilled in the Appellant's brief of argument.

B *"1. Could it truly be said that there were material conflicts in the evidence adduced by the Appellant and his witness to have made the Court of Appeal affirm the decision of the trial Court.*

C *2. Was the Court of Appeal right to have endorsed the findings of the trial Court that the Certificate of Occupancy was fake, false and fraudulent when the Respondents admitted having issued the Certificate to the Appellant.*

D *3. Was the Appellant entitled to the land measuring 6149 sq. metres. And if not was the Court of Appeal not wrong to have denied Appellant the smaller portion of land to which the 2nd Respondent admitted as having been allotted to the Appellant."*

E The circumstances giving rise the present appeal are that the Appellant was allocated a plot of land following his application for the same measuring 6149 square metres by the defunct Gongola State Government (now Adamawa State) at Mubi G.R.A. covered by a Certificate of Occupancy No. GS/5705 with all the 4 beacons demarcating the plot in place. Later when the Appellant wanted to fence the plot, he discovered that the beacons had been removed and his attempt to find out from the Ministry of Lands what happened, his effort did not yield any result as there was no response to his letter. Upon the discovery that the 1st Respondent had occupied part of the plot allocated to him in spite of warning, the Appellant proceeded to the High court and instituted his action against the 1st Respondent and upon realizing that the 2nd and 3rd Respondents were the major players in the dispute, applied to join them to the action and they F were joined. It turned out in the course of the hearing of the case at G the trial Court that the 1st Respondent had also been allocated a plot of land from part of the 6149 square metres plot earlier allocated to the Appellant. I now proceed to consider the issues as identified.

H On the first issue of whether there were material conflicts and contradictions in the evidence brought by the Appellant to justify the dismissal of his case by the trial Court below, I wish to point out that even the Court below in its judgment at pages 230 - 231 of the record earlier quoted in this judgment, had rightly attributed the confusion in the case of the Appellant to the action or inaction of the 2nd

and 3rd Respondents in the evidence of PW.2 called by the Appellant and D.W.2 called by the 1st Respondent whose evidence also covered the case of the 2nd and 3rd Respondents. In this respect, the Appellant was merely a victim of the mistake made in the office of the 2nd and 3rd Respondents who allocated a very large plot of 6149 square metres as contained in the Certificate of Occupancy Exhibit 1, only to resile from their action upon discovering the mistake which was rectified by allocating the 1st Respondent part of the plot earlier allocated to the Appellant. B

However, from the evidence on record, while it is correct as found by the trial Court and affirmed by the Court below to say that the Plaintiff/Appellant did not prove his claim to the first plot allocated to him measuring 6749 square metres as shown the certificate of occupancy Exhibit 1 issued by the office of the 2nd and 3rd Respondents, the evidence of the Appellant and his witness PW.2, read along with the evidence of D.W.2, clearly supports the entitlement of the Appellant to the smaller plot measuring 3225 already allocated to him by the office of the 2nd and 3rd Respondents before the Appellant filed his action at the High Court. The evidence of PW.2 and D.W.2 had very clearly explained the circumstances surrounding the reduction of the size of the plot earlier allocated to the Appellant by mistake to the smaller one the Appellant ought to have been entitled on his application. The law is indeed well settled that where there is a claim for declaration of title to a larger piece of land and the Plaintiff succeeds in proving title to the smaller piece, the Plaintiff is entitled to a declaration of title in respect of the smaller portion. See Udeze v. Chidebe (1990) 1 NWLR (Pt. 125) 141, Ezeakabekwe v. Menike (1998) 9 S.C.N.J. 58 at 73 and Arabe v. Asaulu (1980) 5 - 7 S.C.N.J. 78 at 85. In the instant case therefore, on the evidence on record, the Appellant is entitled to judgment for the smaller portion of the plot already identified as No. 7 Mamiso Road Mubi G.R.A. measuring 3,225 square metres. The appeal therefore succeeds in part in the Appellant's claim for title to the smaller plot rightly allocated to him. C D E F G H

With regard to the allegation that the Certificate of Occupancy Exhibit 1 was not genuine but fake, false or counterfeit, which can be traced to one of the reason for the dismissal of the Plaintiffs/Appellant's claims by the trial court, the trial court also said that the 6149 square

metres plot claimed by the Appellant was never approved or allocated to him by a competent authority. While on the evidence on record the trial Court was correct that the larger plot of land measuring 6149 square metres was not allocated to the Appellant following the discovery of a mistake by the 2nd and 3rd Respondents in the allocation of that plot, there is no evidence whatsoever that the Certificate of Occupancy Exhibit 1 issued to the Appellant by mistake was not genuine, but fake, false or counterfeit. This is because this description of Exhibit 1 contained in the judgment of the trial Court, did not come from the evidence of PW2 or DW2, whose evidence was relied upon by the learned trial judge, particularly when the same two witnesses virtually admitted issuing the same Certificate of Occupancy Exhibit 1 to the Appellant, though by mistake.

It is for the above reasons and fuller reasons in the lead judgment of my learned brother Fabiyi JSC which I had the opportunity of reading before today and with which I entirely agree that I also allow this appeal in part and abide by the orders in the lead judgment including the one on costs.

E

PETER-ODILI JSC

I am in agreement with the judgment and reasoning just delivered by my learned brother John Afolabi Fabiyi, JSC and to place on record that support. I shall make some remarks.

This is an appeal filed by the Appellant against the majority decision of the Court of Appeal, Jos Division Coram: Aloma Mariam Mukhtar JCA (as she then was), Oludapo Oladapo Obadina JCA, Ikechi Francis Ogbuagu JCA (as he then was) delivered on the 27th day of January, 2005 affirming the decision of the High Court of Adamawa State, Mubi sitting at Yola, presided over by J. D. Gwam J which dismissed the claims of the Appellant who was plaintiff at the High Court.

FACTS BRIEFLY STATED:

The Appellant as plaintiff on the 9th day of July 1991 took out a writ of summons against the 1st Respondent as defendant at the High Court of the defunct Gongola State now Adamawa State wherein he claimed the following reliefs:-

- a. An injunction to restrain him or his servants, agents and

privies from continuing to perpetrate the act of trespass on the plaintiff's land.

b. The sum of N40,000.00 only as special and general damages.

A statement of claim of 9 paragraphs was filed by the plaintiff and the defendant filed a statement of defence with the plaintiff filing a reply to the said statement defence. B

The crux of the dispute is that the plaintiff claimed for a declaration that he is the titular owner of that parcel of land covering an expanse of land of 6149 square metres situate at Mamiso Road, Mubi GRA covered by a Statutory Certificate of Occupancy No. GS/5705 and perpetual injunction as well as special and general damages. C

The defendant in his Statement of Defence pleaded that the Certificate of Occupancy held by the plaintiff was fraudulently obtained. D

At the trial, plaintiff testified as PW1, tendered Certificate of Occupancy NO. GS/5705 which was admitted as Exhibit '1' and Ambrose Usman Jime, a Principal Estate Surveyor in the Ministry of Works, Land and Survey testified as PW2. PW1 claimed ownership of the land covered by Exhibit 1. E

Both PW2 and DW2, another officer of the Ministry of Works, Land and Survey gave evidence that the area of land covered by Exhibit 1 did not represent the land allocated to the plaintiff.

The 1st defendant had also applied for land at GRA Mubi Town and was allocated 3037 square metres known as NO. 5 Mamiso Road, GRA, Mubi. It was when 1st defendant was trying to develop the land that the plaintiff sued claiming the land to be his own. F

After evaluation of the evidence before him, the learned trial judge held that the evidence of PW1 and PW2 were in conflict and that the Certificate of Occupancy Exhibit '1' was not genuine and that plaintiff failed to prove his case and consequently dismissed the plaintiff's claims. G

Being dissatisfied, the plaintiff appealed against the said judgment to the Court of Appeal, Jos and by a majority decision the findings and judgment of the trial Court was affirmed in the lead delivered by Mukhtar JCA (as she then was) with Ogbuagu JCA (as he then was) dissenting. H

Against this majority decision of the Court of Appeal or Court

below for short, the Appellant being aggrieved has appealed to the Supreme Court.

Briefs of Argument were settled and on the 3rd day of February, 2014 in the course of the hearing, Mr. Nathan Aghily Ibrahim of counsel adopted the Brief of Argument of the Appellant settled by
B Mrs. J. L. Usoroh, filed on 21/3/07 and deemed filed on 20/6/07, Also, a Reply Brief of 24/4/13.

In the Brief were raised three questions for determination which are as follows:-

C 1. Could it truly be said that there were material conflicts in the evidence adduced by the appellant and his witness to have made the Court of Appeal affirm the decision of the trial Court. Issue from Ground 1.

D 2. Was the Court of Appeal right to have endorsed the finding of the trial Court that the Certificate of Occupancy was fake, false and fraudulent when the respondents admitted having issued the Certificate to the Appellant. Issue from Ground 2.

E 3. Was the Appellant entitled to the land measuring 6.149 Sq. Metres? And if not, was the Court of Appeal not wrong to have denied appellant the smaller portion of land to which the 2nd Respondent admitted as having been allotted to the appellant. Issue from Grounds 3 & 4.

F Learned counsel for the 1st Respondent, Mr. Roland C. Emem adopted the brief of Argument he had settled, filed on 29/6/09 and which was deemed filed on 18/2/13. His arguments were tailored along the issues as framed by the Appellant.

G For the 2nd and 3rd Respondents, Mr. Uche V. Obi on their behalf adopted their Brief of Argument, settled by himself and filed on the 28/1/14 and it was deemed filed on the 3/4/14. He formulated four issues for determination which are stated hereunder. Viz:-

H 1. Whether the Court below was not right to have affirmed the decision of the Honourable Trial Judge that the evidence of the Appellant's witnesses are not only conflicting but are diametrically opposed to each other? (This issue is distilled from ground 1 of the grounds of appeal).

2. Whether going by the evidence adduced before the trial Court, the Court below was not right to have affirmed the decision of the trial Court which held that the Certificate of Occupancy tendered

by the Appellant was fake, false and fraudulent? (This issue is distilled from grounds 2 of the grounds of appeal).

3. Whether the Court below was not right to have affirmed the decision of the trial Court that the Appellant WAS NOT entitled to a parcel of land measuring 6,149 square metres situate at Mamiso Road? B

4. Whether the Court below was not right in refraining from making a declaration of title in favour of the Appellant for the portion of land, though smaller than what the Appellant had claimed, but which appeared to have been established? (This issue is distilled from ground 4 of the grounds of appeal). C

The issues as couched by the Appellant are apt and easier to follow in the determination of the appeal and I shall adapt them for my use.

ISSUE NO. 1: D

In this issue is asked if there were indeed material conflicts in the evidence by the appellant and his witness which made the Court of Appeal to affirm the decision of the Court of trial.

Mr. Ibrahim of counsel for the Appellant contended that the evidence of the Appellant and his witness were not materially contradictory rather the evidence of PW2 was essentially explanatory. That he had stated that the land allocated to the plaintiff was reallocated for policy reasons and that the 1983 survey map superseded that of 1978 upon which plaintiff's title was issued. That the latter survey map divided the land into two, one to the plaintiff and the other to 1st defendant. E F

For the appellant was submitted further that the law with regard to contradictions is stated lucidly in the case of *Ohiwerei v. Okoson* (2003) 11 NWLR (Pt. 832) 463 at 491 wherein it was held that the contradictions must amount to a substantial disparagement of the witnesses and such was not the case in point here. G

Mr. Emem for the 1st Respondent said the pieces of evidence between that of Appellant on the one hand and PW2 on the other show conflicts. That while the Appellant as PW1 claimed title to 6149 sq metres shown on Exhibit 1 as the land allocated to him, PW2 said he was not entitled to 6149 square metres but 2920 square metres. Also that while PW1 said he was issued with a certificate of occupancy, Exhibit '1', PW2 said no certificate of occupancy was made H

out to the Appellant. Learned counsel for the 1st Respondent said those are not minor discrepancies but major contradictions that knock the bottom off the plaintiff's case because in claim of title to land the identity of the land to which the claim relates and its size are basic requirements the plaintiff must prove to succeed. He referred to
 B Usman Kaza v The State (2008) 2 SCNJ 373 at 400; Shaba Audu v. Jubril Guta (2004) NWLR (Pt. 864) 463 at 481; Okochi v. Arimkwai (2003) 2 SCNJ 260 at 270; Odojin v Oni (2001) 1 SCNJ 130 at 144.

C For the 1st Respondent was contended that the evidence of PW1 and PW2 are in conflict with the concurrent findings of the two Courts below and this Court should not disturb those concurrent findings. He cited Nurudeen Adeye & Ors v Chief Sanni Agbatogun & Ors (2001) 2 SCNJ 79 at 87; Hakeem Odonigi v. Aileru Oyeleke
 D (2001) 2 SCNJ 198 at 220.

Mr. Obi, learned counsel for 2nd and 3rd Respondents canvassed along the same lines as learned counsel for the 1st Respondent stating that the oral testimony of PW2 was diametrically opposed to the claims and oral testimony of the Appellant and so the
 E case of the Appellant as the two Courts below found, remained not proven.

The position taken by the Appellant is that if conflicts or inconsistencies were seen in the evidence, they proffered, such were not material enough to affect the outcome of the dispute. This stance the
 F respondents oppose on the ground that there were material and substantial contradictions in the evidence as adduced by the Appellant and so should work to the appellant's disadvantage and cannot be ignored. The Court of Appeal in a majority judgment delivered by
 G Aloma Mariam Mukhtar JCA (as she then was), agreeing with the Court of trial held thus:-

*"The learned trial judge in the instant case was right when he said inter alia "a proper reading of the evidence of PW1 and PW2 called to discharge the onus or burden of proof on the plaintiff in
 H order to succeed, will show that the stories of the said witnesses are not only conflicting but are diametrically opposed to each other and cannot in my view stand together or side by side."*

To see to what extent the contradiction, if such existed would change the course of the dispute, it seems to me needful to get back

to the excerpts of the evidence of PW1 and PW2. Appellant in testifying as PW1 stated thus:-

"I applied for land in 1982. The land was granted to me. The land is situated in GRA Mubi, Mamiso Road. I was given a Certificate in 1988, a Certificate of Occupancy (Statutory No. 95/5705...

After I was granted the Certificate of Occupancy, I wanted to fence the land but I discovered that some of the beacons were missing, I then wrote to the Ministry of Lands and Survey Yola, I did not get a reply from the Ministry of lands Yola. To my dismay, I found the defendant and other persons working on the land. I asked them to stop working on my land but the defendant refused saying that it was the Ministry of lands gave him the land."

On his part, PW2 stated thus:-

"I know the plaintiff and the defendant. The plaintiff is one of our numerous tenants. He came to apply for a piece of land sometime in 1983 and was duly allocated one at GRA Mubi and the documents were processed and sent to Yola for processing. A form was prepared from Mubi, that a plot measuring 73 metres X 40 metres giving a total of 2,920 square metres plot No. 7 Mamiso Road was duly processed in the Headquarters."

After processing a Certificate of Occupancy was issued to the plaintiff. When we sent a copy of the Certificate of Occupancy in our Zonal Office Mubi for their record it was then discovered that the title Deeds recited in the Certificate of Occupancy was reading a different thing from 2,920 square metres to 6.149 square metres."

PW2 had gone on to say:

"I see Exhibit 1 (Certificate of Occupancy) it does not represent the parcel of land granted to the plaintiff. There is another document prepared in 1983 which is current and genuine. The Survey plan used by the plaintiff was prepared in 1978, it has been superseded. The 1983 title Deed divided the land into two; one was given to the plaintiff and the other to the defendant. The plots demarcated in 1978 was too large. The politicians demanded Lands in GRA. After the grant of 1978 was made. It was a policy decision to accommodate the Mubi people and the land was re-allocated."

While the Respondents saw the two witnesses' evidence contradictory of each other, the position of the Appellant is that it was not so and I am inclined to go along with the view of the Appellant

that the evidence of the PW2 was essentially explanatory and not contradictory by what PW2 stated further and that is, “*we were trying to sort out things when the case went to Court.*”

As to what should qualify as material contradiction the case of *Ohiwerei v. Okoson* (2003) 11 NWLR (Pt. 832) 463 at 491 is a pointer.

B In that case, it was held that contradictions must amount to a substantial disparagement of the witnesses. Going through the testimony of the Appellant as PW1 and his witness, PW2 what they said did not so qualify as to be termed contradictions substantial enough to damage the case of the Appellant. Indeed, from the evidence of PW2 and C DW2 neither the Appellant nor the 1st Respondent had been issued with a Certificate of Occupancy in respect of the re-allocation process that was on. The failure clearly was because the suit had been commenced before the certificates bearing the proper re-allocated areas D were made. The effect of what is contained in the record is that the findings of the trial Court and supported by the majority of the Court below are not borne out from the evidence adduced.

From the foregoing, I see no difficulty in resolving the issue 1 against the Respondents and in favour of the Appellant.

E ISSUE NO. 2:

Herein is posed the question if the Court below rightly endorsed the finding of the trial court that the Certificate of Occupancy was fake, false and fraudulent.

F For the Appellant was submitted that the Certificate issued as a result of mistake or inadvertence is not the same as a certificate fraudulently obtained or a fake or false document. That the 1st Respondent who pleaded fraud in his statement of defence did not furnish particulars nor led evidence in that regard. That pleading do not amount G to evidence and any pleading not supported by evidence is taken as abandoned. On the part of the 2nd and 3rd Respondents, there was no pleading on fraud. He referred to *Adekunle v. Rockview Hotel Ltd* (2004) *Oyebisi Afolabi Usenfowakan v. Salamu* (1969) NWLR 77.

H It was further submitted for the Appellant that the authenticity of Exhibit ‘1’ was clearly established by the Plaintiff/Appellant which was supported by the evidence of PW2 and DW2 who gave cogent evidence that the said Certificate of Occupancy was duly issued to Appellant by their office. That the evidence of Defence witness

favourable to the plaintiff's should be accepted as the truth.

In response, learned counsel for the 1st Respondent said the evidence of DW2 is similar to the evidence of PW2 to the effect that the land shown on Exhibit '1' is different from the land granted to the plaintiff and that exhibit 1 does not represent the land that was granted to the plaintiff. That the evidence is relevant and admissible under the proviso to Section 132 of the Evidence Act, Cap 112 LFN 1990 which empowers the use of oral evidence to contradict the contents of documents in cases of fraud or other vitiating elements or circumstances. He cited *Jack v. White* (2001) 3 SCNJ 55 at 68.

For the 2nd and 3rd Respondents was contended that PW2 and DW2 were both principal officers of the 2nd & 3rd Respondents who were in a position to know whether any document which purports to be a document that confers land from the Adamawa Lands Ministry to any individual is genuine or not. That the Court Below was right to have upheld the finding of the trial Court that the Certificate of Occupancy was fraudulently obtained.

On the fakeness of the Certificate of Occupancy and the conclusion being touted by the Respondents that it was fraudulently obtained by Appellant or faked or a counterfeit being put forward by the Appellant as the real thing, the 1st Respondent's position is that if Exhibit 1 contains alterations, does not represent the land approved or allocated to the plaintiff, then the conclusion is that the Exhibit 1 was not genuine but a fake. That was the view also held by the 2nd and 3rd Respondents and accepted by the two Courts below.

From the records, fraud was pleaded at paragraph 10 of the 1st Respondent's statement of defence but the 2nd and 3rd Respondents did not so plead. Two scenarios emerged and that is that anything the 2nd and 3rd respondents proffered in support of the fraud not pleaded goes to naught. In the case of the 1st Respondent what was alluded to in evidence cannot be classified as evidence in proof of fraud which has to be properly proved. It is not enough to plead fraud or that a document was fraudulently obtained when the evidence in support shows no such thing and this is all the more necessary where the forgery at the base of the fraud alleged is a crime which has to be proved on the correct standard, that being beyond reasonable doubt, which is not going to be sidelined because the suit in dispute is civil. Furthermore, the pleading of fraud or forgery or

fraudulent obtaining without evidence is of no value since pleadings cannot translate to evidence. See *Nwaga v. Registered Trustees Club* (2004) FWLR (Pt. 190) 1360; *New Nigerian Bank Plc v. Denclag Ltd* (2004) All FWLR (Pt. 228) 606; *Prof. Ajibayo Akinkugbe v. Ewulum Holdings (Nig.) Ltd. & Anor* (2008) 4 SC 125; *Edokpolo & Co. V. Ohenhen* (1994) 7-8 SCNJ 500.

Indeed what the evidence from both PW2 and DW2 both officers of the Ministry of Lands showed was that a mistake was made on the part of their establishment in the production of the Certificate of Occupancy. That means there was no forgery nor can the Appellant be blamed for an error which occurred from Government functionaries. The situation which the DW2 confirmed as I said earlier is an admission that is favourable to the Appellant and should be accepted as the truth. I rely on *Okoya v. Santilli* (1994) NWLR (Pt. 11) 333 at 352.

There is no gainsaying therefore that the fraud or forgery has not been established and the issue is also resolved in favour of the Appellant and against the Respondents.

ISSUE NO. 3:

In this issue is raised if the appellant was entitled to the land measuring 6.149 square metres and if not, whether the Court of Appeal was right to have denied appellant the smaller portion of land to which the 2nd respondent admitted as having been allotted to the appellant.

For the appellant was submitted that according to the letter of 12th January, 1990 contained in Exhibit 7, the grant of 6.149 square metres to the appellant was in order and so the Court below was wrong not to have accorded it the importance it deserved. Also, that there was reallocation of land to the appellant and so the Court should hold that appellant is entitled to a declaration of that small portion identified as No. 7 Mamiso Road. That the evidence is on an identifiable and certain piece of land on which a declaration can be tied to and the land in dispute ascertainable. He cited *Ajide Araba v. Osunbiyi Asanlu* (1980) 5 - 7 SC 78 at 85.

Learned counsel for the Appellant submitted that the appellant had proved the lesser portion. That where there is a claim for declaration of title to a larger piece of land and the plaintiff succeeds in proving title to the smaller piece, he is entitled to a declaration of

title in respect of the smaller portion. He cited *Udeze v. Chidebe* (1990) 1 NWLR (pt. 125) 141; *Ezeakabekwe v Emenike* (1998) 9 SCNJ 58 at 73; *Arabe v. Asanlu* (1980) S - 7 SCNJ 78 at 85.

Responding for the 1st respondent, learned counsel said that in a claim for the declaration of title to land, the burden of proof is on the plaintiff who must succeed on the strength of his own case though he can take advantage of weakness in the case of defence that supports his case. He referred to *Adetutu Adesanya v. Alhaji S. D. Aderonmu* (2000) 6 SCNJ 242; *Friday Alema v. Princess Akenzua* (2000) 6 SCNJ 226 at 231.

He stated on that in a claim for declaration of title to land, where there are material contradictions in the evidence of the plaintiff's witnesses as to the identity of the land, the claim of the plaintiff must be dismissed. He relied on *Shaba Audu v. Jubril Guta* (2004) 4 NWLR (Pt. 864) 463 at 481.

For the 1st respondent, it was further submitted that the mere production of a Certificate of Occupancy is not conclusive proof that the holder of the certificate of occupancy is the owner of the land to which the certificate relates especially where there is evidence showing that the holder did not have right of occupancy over the land to which the certificate relates because under the Land Use Act, a certificate of occupancy is to be issued in evidence of an existing right of occupancy. He cited Section 90 Land Use Act 1978; *Datoegoem Dakat v. Musa Dashe* (1997) 12 SCNJ 90 at 95; *Daniel Igwe Uche v. Jonah Eke & Ors* (1998) 7 SCNJ 7; *Ogunleye v. Oni* (1990) 2 NWLR (Pt. 135) 745.

For the 2nd and 3rd Respondents, it was submitted that the Court below was right in refraining from making a declaration of title in favour of the appellant for the portion of land, though smaller than what the appellant claimed, but which appeared to have been established. Also that the identity of the land in question had not been established with certainty as required by law.

The answer to issue 3 is pursued by the respondents along the line of the lack of identity of the land and so the claim of the plaintiff would be dismissed. Also, that the mere production of a certificate of occupancy is not conclusive proof that the holder of the certificate of occupancy is the owner of the land to which the certificate relates especially where the evidence shows that the holder did not have

right of occupancy over the land to which the certificate relates.

In reaction, the Appellant's point is that the land allocated to the appellant was ascertainable and measuring 3.225 square metres, which parcel of land PW2 and DW2 the appropriate officials responsible for assigning lands to the public who agreed that they granted to the appellant. That the appellant had proved the lesser portion and in a declaration of title to a larger piece of land and the plaintiff succeeds in proving title to the smaller piece, he is entitled to a declaration of title in respect of the smaller portion.

In considering these two divergent opinions of the parties on the issue of the ability to identify the land in dispute, there is evidence from PW2 that the Survey plan used by the Appellant had been prepared in 1978 which had been superseded and, *"the 1983 Title Deed divided the land into two, one was given to the plaintiff and the other to the defendant. The plots demarcated in 1977 were too large. The politicians demanded lands in the GRA after the grant of 1978 were made."*

Appellant in his testimony had stated that he had not read the two or three documents sent to him before the Certificate of Occupancy was issued to him by the Ministry of lands and which officials did not produce copies of the said documents sent to the Appellant to enable the Court know of their importance or relevance to the subject matter in controversy. It is to be said that there was incontrovertible evidence of the Appellant that it was at the time he wanted to fence the land granted to him, that he discovered that some of the beacons, had been removed by unknown persons and the beacons were missing and Appellant had written to the Ministry of Lands and survey raising these concerns. Also to be noted is the PW2's evidence that it was after the re-allocation of the land that a plot allocated was communicated to the appellant. That it was when the Ministry of Lands and Survey were trying to sort out the matter for which Appellant complained that Appellant went to court and all actions by the officials ceased.

What is thrown up therefore with the evidence of the Appellant and those of the Respondents including the aspects of the Respondents' favourable or supporting the position of the Appellant, that it is clear that the issue of land not identified does not arise as there is no difficulty in identifying the land and a declaration of title to

the alternate piece or parcel of land to the Appellant could easily be made without it being made either with the Survey plan already tendered or the certificate of occupancy which has shown up an error in dimensions not fault of the Appellant. I place reliance on *Ajide Araba v. Ogunbiyi A. Asanlu* (1980) 5 -7 SC 78 at 85; *Udeze v. Chidebe* (1990) 1 NWLR (pt. 125) 141; *Ezeakabekwe v. Emenike* (1998) 9 B SCNJ 58 at 73.

From the above, what seems clear is that the Court of trial and the majority decision of the Court of Appeal cannot be sustained, and that the appellant is entitled to the identified area of land as done by PW2 and DW3. This third issue is resolved in favour of the Appellant.

All the issues effectively resolved in favour of the Appellant and the fuller reasoning in the lead judgment of my brother, I too allow the appeal in part and set aside the majority decision of the Court of Appeal which had affirmed the judgment of the trial High Court.

I abide by the consequential orders in the lead judgment.

E

MUHAMMAD JSC

I had a preview of the lead judgment of my learned brother Fabiyi JSC just delivered. I agree with his lordship's reasoning and conclusion that the appeal succeeds in part. I rely on the summary of facts made in the lead judgment in offering a few words of mine in support of the lead judgment. I shall further allude to these facts only for the purpose of making the emphasis I seek to make better understood. The three issues distilled by the appellant read:-

Issue No 1

G

Could it truly be said that there were material conflicts in the evidence adduced by the appellant and his witness to have made the Court of Appeal affirm the decision of the trial court?

Issue No 2

Was the Court of Appeal right to have endorsed the finding of the trial court that the certificate of occupancy was fake, false and fraudulent when the respondents admitted having issued the certificate to the appellant?

Issue No 3

Was the appellant entitled to the land measuring 6,149 square metres?

And if not, was the Court of Appeal not wrong to have denied appellant the smaller portion of land to which the 2nd respondent admitted as having been allotted to the appellant?"

B I must state that in resolving the foregoing three issues distilled by the appellant for the determination of his appeal the evidence on record will form the only legitimate basis of the stand one takes on these issues. Does the evidence on record, particularly the evidence of PW1 and PW2 on which the appellant weaves his case, suggest the type of conflict the law holds disentitles courts to base their decisions on? Does the very evidence justify the Lower Court's affirmation of the trial court's finding that Exhibit 1, the certificate of occupancy on which the appellant rests his claim, is fake, false and fraudulent? Finally, given the same body of evidence are the two courts below right in their concurrent findings that the appellant has not made out his case?

All the three issues the appellant poses for the determination of the appeal indeed question the concurrent findings of the two courts below. It is not that it is impossible to have such findings reversed on appeal. Where the appellate court finds these findings to be perverse it is empowered to step in and ensure that the justice of the case is met by arriving at the correct decision. And a finding is said to be perverse if it does not evolve from the evidence on record or in arriving at the finding the court had taken into account extraneous matters or excluded relevant matters from its consideration. See *Nwabueze V. State* (1988) 4 NWLR (pt 86), *Eseigbe V. Agholor* (1993) 9 NWLR (pt. 316) 128 and *Emwenya V. AG Bendel State* (1993) 6 NWLR (pt. 297) 29.

In addition to his testimony as PW1, the appellant further relied on the evidence of PW1 in proving his case at the trial court. At pages 27-28 of the record, PW1 testified inter-alia as follows:-

"I applied for the land in 1982. The land was granted to me. The land is situate in G.R.A. Mubi, Mamiso Road. I was given a Certificate in 1988, a Certificate of Occupancy (Statutory No. GS/5705..... After I was granted the Certificate of Occupancy, I wanted to fence the land but I discovered that some of the beacons were missing. I then wrote to the Ministry of Lands & Survey Yola. The letter is dated

6/7/90...I did not get a reply from the Ministry of Lands Yola. I then came to Mubi in April 1991 to see if the Ministry had regularized the mistake. To my dismay I found the defendant and other persons working on the land. I asked them to stop working on my land but the defendant refused saying that it was the Ministry of Lands that gave him the land. B

That is why I have come to court. I want the court to restrain the defendant from further entry and to vacate the land and to pay me N40,000.00 for trespass and to pay the costs of this action."

Under Cross examination, the appellant proceeded thus:- C

"I applied for the land in 1982. I was sent 2 to 3 documents were sent to me before the Certificate of Occupancy by the Ministry of Lands. When I got the letters I did not read them. Afterwards I did not care to read. When I got the Certificate of Occupancy, I did not read it. It was the Ministry of Lands Officials that told me it was Certificate of Occupancy." D

PW11 testified partly at pages 28-29 of the record thus:-

"The plaintiff is one of our numerous tenants. He came to apply for a piece of land sometime in 1983 and was duly allocated one at G.R.A. Mubi and the documents were processed and sent to Yola for processing. A form was prepared from Mubi that a plot measuring 73 metres X 40 metres giving a total of 2,920 square metres plot No. 7 Mamiso Road was duly processed in the headquarters. E

After processing, a certificate of occupancy was issued to the plaintiff. When we sent a copy of the certificate of occupancy in our Zonal Office Mubi for their record it was then discovered that the Title Deeds recited in the Certificate of Occupancy was reading a different thing from 2,920 square metres to 6,0149 square meters. A letter was written from the Area Office to Headquarters Yola alerting the Headquarters to the defect. The letter was dated the 24/10/89... I see Exhibit 1 it does not represent the parcel of land granted to the plaintiff. There is another document prepared in 1983 which is current and genuine. The survey plan used by the plaintiff was prepared in 1978, it has been superseded. The 1983 Title Deed divided the land into two: one was given to plaintiff and the other to the defendant. The plots demarcated in 1978 was too large. The politician's demarcated lands in the G.R.A. after the grant of 1978 were made. It was a policy decision to accommodate the Mubi people and the F G H

land was re-allocated.

Certificates have been issued in respect of recent grants."

Under cross examination PWII stated at page 30 of the record in part as follows:-

B *"It was after re-allocation of the land that a plot allocated was communicated to the plaintiff.*

It is true that a provisional allocation letter is sent out to the applicant before the final grant. The area allocated will be clearly stated in the approval letter."

C At pages 38-39 of the record of appeal is the evidence of DW2. Same is hereunder reproduced for ease of reference:-

D *"I know the plaintiff through our records in the Area Office Mubi. The plaintiff came to Ministry of Land & Survey Mubi Area Office on 15/10/82 and applied for a plot in G.R.A. and paid appropriate deposit of N125.00 on 6/12/92. He was allocated another piece of land measuring about 2,920 square metres in Mubi G.R.A. The land was under a certificate of occupancy No. NE.817... I see Exhibit 1; it is the certificate of occupancy prepared in favour of the plaintiff. The area indicated in Exhibit 1 does not truly reflect the area*
 E *of the plot approved. The area approved was 3,225 square metres but the area in the title 6, 149 square i.e. certificate of occupancy. It is not plausible that the area approved in the title deed should be different from the area contained in the provisional approval. The*
 F *areas should be the same. When we noticed the discrepancy according to our Area Record a letter was written to the Director-General that GS/5705 issued to the plaintiff overlaps with GS.7204 and GS.7208 belonging to Alhaji Sanni Inusa and 1st Defendant. The letter was signed by M. Samuel. I am conversant with his signature. I*
 G *see the letter."*

Under cross examination, DWII stated inter-alia at pages 41-42 of the record thus:-

H *"I see Exhibit 6 page 1. In it the plaintiff applied for a parcel of land on the 15-3-82..... We are simply saying that the plaintiff is only entitled to the area covered by the provisional approval which is 3255 square metres and not 86149 square metres."*

On his being re-examined, DWII stated at pages 42-43 thus:-

"The Zonal Office physically inspected the land. We wrote page 19 (Exhibit 5) to call for the amendment of certificate of occupancy

issued to the plaintiff to avoid conflict in the Area Office. It is the duty of the Area to call attention of the Head Office if there is any error detected by the office."

The Appellant had averred in paragraph 9 of his amended statement of claim inter-alia thus:-

"9. Whereof the plaintiff claims against the defendants jointly and severally the following reliefs:

(a) A declaration that the plaintiff is the titular owner of that parcel of land covering an expanse of land of 6149.00 square metres situate at Mamiso Road, Mubi G.R.A. covered by a Statutory Certificate of Occupancy No. GS/5705."

It is particularly in respect of the foregoing averment and the evidence adduced by both sides for and against the claim as summarized supra that the trial court firstly held at pages 62-63 of the record thus:-

"A proper reading of the evidence of the P.W.1 and P.W.2 called to discharge the onus or burden of proof on the plaintiff, in order to succeed, will show that the stories of the said witnesses are not only conflicting but are diametrically opposed to each other and cannot in my view stand together or side by side... The conflict in the versions of the stories given by the witnesses called by the plaintiff rather than building up a concrete case, has in my view not only weakened the case but destroyed the case of the plaintiff. I think this is a proper situation where I shall have no option but to treat the root of title of the plaintiff as unreliable."

Since the case of the plaintiff has not only been weakened but destroyed, the plaintiff cannot in a claim for declaration of title to land such as this, seriously rely on a weakened and dead case. It is in fact elementary that he cannot be said to have discharge the onus on him. He has failed in that regard."

The court proceeded at page 63 of the record as follows:-

"After having carefully studied my notes of evidence in respect of the evidence of D.W.1 and D.W.2 called by the defence, and I believe them, I feel that the case of the 1st defendant and the other defendants are very formidable and cannot be said by any stretch of imagination to support the case of the plaintiff. It seems to me that the case of the defendants does not support the case for the plaintiff. I must state that I do not believe the plaintiff since he does not im-

press me as a truthful witness.”

It concluded thus:-

“A proper reading of the evidence of P.W.2 and D.W.2 will show that a particular parcel of land measuring 6149 square metres situate and lying at G.R.A. Mubi was never approved or allocated to the plaintiff by the competent authority contrary to his contention. It follows that Exhibit 1 is not genuine but faked, false or a counterfeit. It is clear from the foregoing that the plaintiff has failed to make out the case he had embarked upon and in my view his claims must be dismissed for lack of merit.”

It is the foregoing findings of the trial court that in its majority decision the lower Court affirmed.

I am in complete agreement with learned counsel to the appellant that the lower Court’s concurrent findings on these facts are equally perverse. I shall authenticate this view at once.

The law is that it is not all contradictions in the evidence proffered and relied upon by a party in proof of its case that results in the rejection of the evidence. It is only material discrepancies which constitute substantial disparagement of the witnesses concerned, in the sense that reliance on their testimony will likely result in miscarriage of justice that should impact negatively on the case of the party who relies on such evidence. Thus contradictions in the evidence of witnesses may not be fatal to a case especially when they are minor and do not materially affect the fundamental and crucial issues in the case. Contradictions are fatal only if, not being minor, they go to the substance of the case. And what is material and substantial remains a question of fact. See *Nathaniel Nasamu V. State* (1979) 6-7 SC 112 and *Usiobaifo & anor V. Usiobaifo and anor* (2005) 1 SCM 193.

Again, it must be realised that human beings not being machines do not, in the course of giving evidence before courts, act with the characteristic automation of machines. Where two people give evidence on the same matter or event and remain consistent to the minutest details, their evidence become suspect. The court in such a situation will be justified to infer that they had either been tutored or rehearsed before the date of giving evidence. See *Samson Owie V. Solomon E. Aghiwi* (2005) 2 SCM 149, *Agbo V. The State* (2006) 1 SCNJ 332 and *Lukman Osetola & anor V. The State* (2012) 6 SC (Pt iv) 148.

In the case at hand the only seeming contradiction in the evidence of PWI and PWII is as to the time the appellant applied to be allocated the land in dispute. This contradiction is not material enough as to vitiate the evidence of both witnesses, No case will succeed if every trivial contradiction is allowed to vitiate the trial notwithstanding the otherwise overwhelming evidence before the court. On the point, the evidence of DWII adds to appellant's position as to when he applied for the land. The finding of the trial court and its affirmation by the lower Court on the discrepancy in the testimonies of appellant's witnesses clearly failed to draw from the evidence on record. If anything, the testimony of PWII as much as DWII only explain the reason behind the allotment to the 1st respondent part of the land in dispute by the 2nd and 3rd respondents after reducing the size of the plot the appellant was actually granted initially. Most certainly it is perverse for the lower Court to affirm the finding that Exhibit 1 issued to the appellant by the 2nd and 3rd respondents is fake, false and fraudulent. The appellant who did not issue Exhibit 1 to himself remains a victim of the conduct of these two. It is manifestly unjust to allow him to suffer on that wrong premise.

Lastly, it is discernible from the totality of the evidence before the two courts below that the appellant has a grief which entitles him to a relief. The only reason of his being denied the relief is what the two lower Courts wrongly view as the variance of his pleading in relation to the size and identity of the land actually allocated to the appellant following the deliberate policy of the 2nd respondent to accommodate other applicants, including 1st respondent, and the aftermath of the policy: the reduction of the size of the plot appellant was initially allocated. We must step in to ensure the justice of the moment.

It is for the foregoing and the more distinctive reasons advanced in the lead judgment that I allow the appeal in part too. I abide by the consequential orders contained in the lead judgment.

KEKERE-EKUN JSC

I have had the privilege of reading in draft the judgment of my learned brother, FABIYI, JSC just delivered. I agree entirely with the reasoning and conclusion therein that this appeal has some merit

and should succeed in part. I wish to make a few comments in support of the lead judgment.

This is an appeal against the majority decision of the Court of Appeal, Jos Division delivered on 27/1/2005 affirming the decision of the High Court of Adamawa State, Mubi Judicial Division, sitting at Yola delivered on 13/6/1995, which dismissed the plaintiff's claims in their entirety.

The appellant as plaintiff at the trial court, initially filed a writ of summons and statement of claim against the 1st respondent alone seeking:

a. An injunction to restrain the defendant by himself, his servants, agents, privies and all persons acting through him howsoever from continuing to perpetrate the aforesaid act of trespass on the plaintiff's parcel of land situate at Mamiso Road, GRA Mubi and covered by Statutory Certificate of Occupancy No. GS/5705 dated 23/11/1988.

b. The sum of N40, 000.00 (Forty Thousand Naira) only as Special and General Damages and with costs.

c. Such further or other reliefs.

Pleadings were filed and exchanged and the matter proceeded to trial. The appellant testified on his own behalf and called one other witness, PW2, a member of staff of the 2nd respondent. After the testimony of PW2, the appellant applied to join the 2nd and 3rd respondents herein as parties to the suit. The application was granted and the court processes were amended accordingly. By Paragraph 11 of his amended statement of claim, the appellant sought the following reliefs:

a. A declaration that the plaintiff is the titular owner of that parcel of land covering an expanse of 6149 sq. metres situate at Mamiso Road, Mubi, GRA covered by a Statutory Certificate of Occupancy No. GS/5705.

b. A perpetual injunction restraining the 2nd and 3rd defendants by themselves, their servants, agents, privies and all persons acting through them whosoever from doing any act to the effect of tampering with the plaintiff's title and ownership over the aforesaid parcel of land covered by certificate of occupancy No. GS/5705.

c. A perpetual injunction to restrain the 1st defendant by himself, his servants, agents, privies, and all persons acting through him

howsoever from continuing or perpetuating the aforesaid act of trespass on the plaintiff's aforesaid parcel of land covered by certificate of occupancy No. GS/5/05.

d. The sum of N40,000.00 (FORTY THOUSAND NAIRA) only against the 1st defendant as Special and General damages for trespass and with costs. B

e. Such further or other reliefs.

The respondents called two witnesses, namely, the 1st Respondent and DW2, a member of staff of the 2nd respondent. The appellant's case is that he was granted a parcel of land measuring 6.149 sq. metres by the government of the defunct Gongola State (now Adamawa State) in 1982. When he went to the land to fence it he found that some of the beacons were missing. He wrote to the Ministry of Lands (2nd respondent) but received no response. Upon a further visit to the land he met the 1st respondent's workers working on a portion of the land. He asked them to stop but the 1st respondent refused, claiming that he had a right to the land having also been allocated a portion of land measuring 3037 sq. metres known as No. 5 Mamiso Road, GRA, Mubi by the 2nd respondent. C
D

At the trial PW2 admitted that the appellant applied for land sometime in 1983 and was allocated a plot measuring 2,920 sq. metres at Plot 7 Mamiso Road and that he was issued with a statutory certificate of occupancy. He stated that it was later discovered that the title deeds recited in the certificate of occupancy described the land as measuring 6.149 sq. metres. He testified that there was another document prepared in 1983 that supersedes Exhibit 1 relied upon by the appellant. He stated that the land originally allocated to the appellant was divided into two as a result of the agitation of politicians for land in the GRA. When it was split into two, the 1st respondent was given a portion. The evidence of DW2 essentially confirmed that of PW2. E
F
G

At the conclusion of the trial, the learned trial Judge dismissed the appellant's case in its entirety on the ground that the evidence of the appellant and his witnesses was conflicting and that the certificate issued to him was fake. The appellant was dissatisfied with the decision and appealed to the lower Court. The judgment of the trial court was affirmed by a majority decision. Still dissatisfied, the appellant has appealed to this court vide his notice of appeal dated 30/6/2006 containing four grounds of appeal. H

The appellant formulated three issues for determination. The 1st respondent also formulated three issues for determination, while the 2nd & 3rd respondents formulated four issues. The 2nd & 3rd respondents' fourth issue can be accommodated under the appellant's issue 3. I am of the considered view that the issues formulated by the appellant are adequate for the disposal of the issues in controversy in this appeal. They are as follows:

1. Could it truly be said that there were material conflicts in the evidence adduced by the appellant and his witness to have made the Court of Appeal affirm the decision of the trial court?

2. Whether the Court of Appeal was right to have endorsed the finding of the trial court that the Certificate of Occupancy was fake, false and fraudulent when the respondents admitted having issued the certificate to the appellant.

3. Was the appellant entitled to the land measuring 6.149 metres? And if not, was the Court of Appeal not wrong to have denied [the] appellant the smaller portion of land to which the 2nd respondent admitted as having been allotted to the appellant.

Issue 1

The law is settled that in an action for declaration of title, the plaintiff must succeed on the strength of his case and not on the weakness (if any) of the defence, except where the defence supports the plaintiff's case. See: *Onwugbufor V. Okoye* (1996) 1 NWLR (424) 252; *Shittu v. Fashawe* (2005) 14 NWLR (946) 671; *Eze v. Atasi* (2000) 9 WRN 73 at 88; *Adesanya V. Aderonmu* (2000) 13 WRN 104 at 115 lines 10 - 35. The standard of proof is on a preponderance of evidence. It is also trite that where the evidence adduced by the plaintiff is contradictory, he would have failed to discharge the onus of proof on him. The simple dictionary meaning of "contradictory" as defined in Dictionary.com Dictionary & Thesaurus for iPad is: "asserting the contrary or opposite; contradicting; inconsistent, logically opposite." At page 62 of the record, the learned trial Judge held as follows:

"A proper reading of the evidence of the PW1 and PW2 called to discharge the onus of burden of proof on the plaintiff in order to succeed, will show that the stories of the said witnesses are not only conflicting but are diametrically opposed to each other and cannot in my view stand together or side by side."

I entirely agree with Mr. Kyanson, the learned Senior State Counsel 1 that there is a serious conflict between the stories of the PW1 and PW2 as to the area granted to the plaintiff, if the grant was made at all. It seems to me that there is no doubt that the areas of conflict relate to material issues in the case of the plaintiff... There is no attempt to explain the conflict by the plaintiff or his witness.” B

In affirming the judgment of the trial court, the lower Court held:

“I think there is real contradiction in the evidence of PW1 and PW2 on the identity and size of the parcel of land in dispute, and identity being one of the crucial material facts to be proved by a party, this contradiction on the evidence of identity has knocked the bottom of (sic) the Appellant’s case.” C

Now, what is the evidence led by these two witnesses that is said to be contradictory? The appellant who testified as PW1 stated at D page 27 of the printed record thus:

“I applied for the land from the Ministry of Lands & Housing. I applied for the land in 1982... The land is situate in G.R.A. Mubi, Mamiso Road. I was given a Certificate of Occupancy (Statutory) No. GS/5705... After I was granted the Certificate of Occupancy, I wanted to fence the land but I discovered that some of the beacons were missing. I then wrote to the Ministry of Lands & Survey Yola.... I did not get a reply from the Ministry of Lands, Yola. I then came to Mubi in April 1991 to see if the Ministry had regularised the mistake. To my dismay I found the defendant and other persons working on the land. I asked them to stop working on my land but the defendant refused saying that it was the Ministry of Lands that gave him the land. That is why I came to court” E F

The Certificate of Occupancy No. GS/5705 was admitted in G evidence as Exhibit 1.

PW2, a Principal Estate Surveyor 1 at the Ministry of Works, Lands and Survey, testified at pages 28 - 29 of the record as follows:

“I know the plaintiff and the defendant. The plaintiff is one of our numerous tenants. He came to apply for a piece of land some-time in 1983 and was duly allocated one at G.R.A. Mubi and the documents were processed and sent to Yola for processing. A form was prepared from Mubi that a plot measuring 73 metres X 40 metres giving a total of 2,920 square metres Plot No. 7 Mamiso Road was H

duly processed in the Headquarters.

After processing, a certificate of occupancy was issued to the Plaintiff. When we sent a copy of the certificate of occupancy to our Zonal Office, Mubi, for their record, it was then discovered that the Title Deeds recited in the Certificate of Occupancy was reading a different thing from 2,920 square metres to 6,0149 square metres.

A letter was written from the Area Office to Headquarters, Yola, alerting the Headquarters to the defect. The Headquarters then wrote to the Zonal Office in reply..

I see Exhibit 1. It does not represent the parcel of land granted to the plaintiff. There is another document prepared in 1983 which is current and genuine. The survey plan used by the plaintiff was prepared in 1978, it has been superseded. The 1983 Title Deed divided the land into two: one was given to the plaintiff and the other to the defendant. The land demarcated in 1978 was too large. The politicians demanded land in the G.R.A. after the grant of 1978 were made. It was a policy decision to accommodate the Mubi people and the land was re-allocated. Certificates have been issued in respect of recent grants.”

Under cross-examination by learned counsel for the 1st respondent, he stated thus:

“The land allocated to the plaintiff is 2,290 square metres. I will be surprised if the plaintiff is claiming 6,149 square metres as the plot allocated to him.”

Under re-examination he stated:

“No certificate has been made out to the plaintiff. We were trying to sort things when the case went to court.

We have not issued a certificate of occupancy to the defendant. We are (sic) in the process when we got the summons to testify. No grant or certificate of occupancy or approval has been granted to the plaintiff.”

It is the contention of the appellant herein that the evidence of PW2 was explanatory and not contradictory. The respondents however, maintain that the evidence of the appellant and his witness are in material conflict and cannot stand together. It is contended on behalf of the 1st respondent that the discrepancy between 6,149 square metres claimed by the appellant and 2,920 square metres, which PW2 stated that he is entitled to, is a major contradiction.

Learned counsel also observed that while PW1 said he was issued with the certificate of occupancy, Exhibit 1, PW2 stated that no certificate was made out to him. The 2nd and 3rd respondents also share this view.

In contending that the evidence of the appellant and his witness is contradictory the respondents have taken a rather simplistic view of the evidence. They have merely looked at the fact that the appellant is claiming 6,149 square metres while PW2 stated that the land allocated to him is 2,920 square metres. It is important to consider the entire testimony as a whole. The size of the land allocated to the appellant and what he is said to be entitled to must be seen within the wider context of the entire scenario involving the said allocation. A careful perusal of the evidence of both witnesses shows that PW2 never denied the fact that the appellant was allocated a parcel of land at Mamiso Road, Mubi. It was also clear from his evidence that the appellant did not pull the figure “60149 square metres” out of thin air! PW2 stated that “... it was then discovered that the Title Deeds recited in the Certificate of Occupancy was reading a different thing from 2,920 square metres to 6,149 square metres.” This discovery was made in the normal course of the 2nd and 3rd respondents’ business, in the process of settling their records. PW2 went on to say that a letter was written from the Area Office to the Headquarters in Yola “alerting the Headquarters to the defect.” The witness also went on to say that for policy reasons, the land originally allocated to the appellant was later divided into two, and half of it was allocated to the 1st respondent, in order to satisfy the request of politicians for allocation of land in the G.R.A.

This court is usually very reluctant to interfere with concurrent findings of fact by the two lower Courts. It will however not hesitate to do so where those concurrent findings are shown to be perverse or cannot be supported by the evidence or where there has been a miscarriage of justice. See: Ugwanyi V. FR.N. (2012) 3 SC (Pt. II) 95 @ 122 - 123; Cameroon Airlines V. Otutuizu (2011) 1- 2 SC (Pt. III) 200; Amadi V. Nwosu (1992) 6 SCNJ 6. It is my considered view that the evidence of PW2 cannot be construed as asserting the opposite of the testimony of PW1. I am inclined to agree with learned counsel for the appellant that when looked at in its entirety, the evidence of PW2 complimented rather than contradicted the evidence of PW1.

He filled in some missing gaps that were unknown to the appellant. He was able to explain what transpired in the office of the 2nd respondent that gave rise to the appellant's misapprehension of the actual size of the land allocated to him. I therefore resolve this issue in favour of the appellant.

B Issue 2

My learned brother, Fabiyi, JSC has dealt with this issue comprehensively in the lead judgment. My view, in support of the lead judgment on this point, is that it would appear that both lower Courts were misled when PW2 said in his evidence in chief at page 29 lines 39 - 41 of the record,

"I see Exhibit 1. It does not represent the parcel of land granted to the plaintiff. There is another document prepared in 1983 which is current and genuine."

D In my view, the error occurred from the misuse of the word "genuine" by the witness. When read in context it is clear that what he was saying, in effect, is not that Exhibit 1 was a fake but that there was a later document prepared in 1983, which was the current document reflecting the correct state of affairs. This view is buttressed by E the fact that in the next breath (lines 41 - 45) he said,

"The survey plan used by the plaintiff was prepared in 1978, it has been superseded. The 1983 Title Deed divided the land into two: one was given to the plaintiff and the other to the defendant. The land demarcated in 1978 was too large."

F Although the 1st respondent pleaded in paragraph 10 of his statement of defence that the certificate of occupancy held by the appellant was fraudulently obtained, he failed to plead the particulars of the fraud or to prove the allegation beyond reasonable doubt, G as required by law. See: *Highgrade Maritime Services Ltd. V. First Bank of Nigeria Ltd.* (1991) 1 NWLR (Pt. 167) 290; (1991) 2 SCNJ 110; *Olufumise V. Falana* (1990) 4 SC 174; *Ntuks V. M.P.A.* (2007) 5 - 6 SC 1; (2007) 13 NWLR (1051) 392. The implication of the failure of the 1st respondent to plead the particulars of the alleged fraud H or to lead evidence in support is that the said pleading is deemed abandoned. It is also significant that in their statement of defence, the 2nd and 3rd respondents did not deny issuing Exhibit 1 but pleaded facts in paragraphs 5 - 8 to explain how the irregularity occurred and steps taken to rectify the error. Indeed in the course of his evidence in

chief, when shown Exhibit 1, DW2 (an Estate officer employed by the 2nd respondent) said at page 39 lines 19 and 20 of the record.

“I see Exhibit 1, it is the certificate of occupancy prepared in favour of the plaintiff.”

He then went on to testify in support of the pleading in paragraphs 5 - 8 of their statement of defence as to how the discrepancy between area approved for the appellant at Plot 7 Mamiso Road, which according to him was 3,335 square metres, and the 6,149 square metres reflected in Exhibit 1 was discovered and the steps taken to rectify the mistake. As pointed out by my learned brother in the lead judgment, even the court below was of the view that the confusion that arose in this case was caused by the “action or inaction” of the 2nd and 3rd respondents. See page 230 of the record. I therefore resolve this issue in the appellant’s favour.

Issue 3

I agree entirely with the reasoning and conclusion of my learned brother in the lead judgment on this issue. There was clear evidence before the trial court that the appellant was entitled to a declaration in respect of No. 7 Mamiso Road, Mubi, which was shown by the 2nd and 3rd respondents to be what his original allocation had been reduced to, after it was split into two and half allocated to the 1st respondent.

For these and the more detailed reasons contained in the lead judgment of my learned brother, Fabiyi, JSC, I also allow the appeal in part. I abide by the consequential orders therein including the order as to costs.