

## **EXAMINATION OF THE ONEROUS DUTY INVOLVED IN THE IDENTIFICATION OF THE LAND IN DISPUTE IN LAND MATTERS**

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### **Introduction**

In land litigation, the party who seeks for declaration of title to land must identify with certainty the precise area of the land in dispute. Where the claimant fails to discharge this burden, his claim is bound to fail. In this article, we are going to critically examine the onerous duty involved in the identification of the land in dispute. This will go a long way in equipping the students and lawyers on the importance of the identification of the land in dispute so that in land matters, they will not make mistake of not identifying the land in dispute.

### **Recognized methods of establishing ownership of land**

There exist 5 recognized methods by which ownership of land may be established. They are as follows:

- i. Proof by traditional evidence;
- ii. Proof by production of document of title;
- iii. Proof by acts of ownership extending over a sufficient length of time, numerous and positive enough as to warrant the inference that the persons exercising such acts are the true owners of the land;
- iv. Proof by acts of long possession; and
- v. Proof by possession of connected or adjacent land in circumstances rendering it probable that the owner of such land would in addition be the owner of the land in dispute. See *Uzochukwu v. Eri*<sup>1</sup>, *Ewo v. Ani*.<sup>2</sup>

Note that proof of any of the 5 methods will suffice. See *Idundum v. Okumagba*.<sup>3</sup>

### **Court's first duty in a claim for declaration of title to land**

The court's first duty, therefore, in a claim for declaration of title to land, is to ensure that the land is properly identified before attempting to delve into the other issues in proving the plaintiff's entitlement to ownership of the land in dispute. See *Odunze v. Nwosu*,<sup>4</sup> *Olokunlade v. Adenoloyo*.<sup>5</sup> The reason for this is because it is settled law that an interlocutory injunction cannot be and should not be made in respect of an area of land whose boundaries are not properly identified or known. See *Dabup v. Kolo*.<sup>6</sup> An order for an interlocutory injunction must be tied to a parcel of land thereof which should clearly define the area over which an injunction is sought. See *ACB Ltd v. Awogboro*,<sup>7</sup> *Lawal v. Adeleke*.<sup>8</sup> A party who seeks a declaration of title to land or an injunctive relief must prove the precise area to which his title relates. See *Agbonifo v. Aiwerioba*.<sup>9</sup> In *Ate Kwadzo v. Kwasi Adje*<sup>10</sup> the court held as follows: Before a declaration of title or injunctive relief is given, the land to which it relates must be ascertained with certainty. The test being whether

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<sup>1</sup> (1997) 7 SCNJ 238.

<sup>2</sup> (2004)1 SCNJ 272.

<sup>3</sup> (2002)20 WRN 127, (1976)9-10 SC 277.

<sup>4</sup> (2007) 13 NWLR (Pt. 1050) 1at 31; (2007) ALL FWLR (Pt. 379) 1295.

<sup>5</sup> (2011) 35 WRN 41, Ratio 5.

<sup>6</sup> (1993) 9 NWLR (Pt. 317) 254 SC.

<sup>7</sup> (1996) 3 NWLR (Pt. 347)383 SC.

<sup>8</sup> (2004)48 WRN 35, Ratio 6.

<sup>9</sup> (1988) 1 NWLR (Pt. 70) 325 at 357.

<sup>10</sup> (1944) 10 WACA 274.

surveyor can from records produce an accurate plan of such land. It is quite certain that no surveyor could do that in this case. This case has been twice heard in the Native Tribunal of Akome and has passed on appeal through the courts of the Avatime State Council and the Provincial Commissioner of the Eastern Province till it has eventually reached this court. It was impossible even at this stage to ascertain with any degree of accuracy the boundaries of the land in dispute to which the plaintiff has been given a declaration of title. The Appeal was accordingly allowed, the judgment of the Provincial Commissioner's Court, including the order as to costs, was set aside and it was ordered that if any sum has been paid in pursuance thereof it shall be refunded, the case was remitted to the Provincial Commissioner's Court with the direction that the assistance of a proper plan showing the land in dispute be utilized. In *Madam Salami v. Sunmonu Eniola*<sup>11</sup> the Court held thus:

A good plan should mirror all the features of the land as pleaded. A plan that is at variance with the pleadings must be taken as inaccurate and vague. The party's case (that is, the party with such inaccurate plan) goes to no issue.

### **How to prove the identity of a land in dispute**

There are various ways of proving the identity of a land in dispute as required by law on the proof for declaration of title to land. It is now well settled that the way to prove the identity of the land in dispute is to plead and lead evidence of -:

- a) The boundaries of the area and location of the land the plaintiff is claiming;
- b) their neighbors on all sides of the boundaries, where some boundaries are marked by river, roads and their names; and
- c) Any other physical features on the land like rocks, building, trees etc. that may assist its identification. See *Dauda v. Iba*<sup>12</sup>, *Olokunlade v. Ademiloyo*.<sup>13</sup>

In *Ezeukwu v. Ukachukwu*,<sup>14</sup> Edozie JSC stated the requirement of the law, and on whom the onus lies thus:-

In action for declaration of title to land, the onus is on the plaintiff to establish with certainty the identity of the land in dispute to which his claim is related. This, he can do in one of two ways, viz, by oral evidence describing with such degree of accuracy the said parcel of land in a manner that will guide a surveyor in producing a survey plan of the said land. See *Baruwa v. Ogun State* (1988)4 WACA 159. Another way and perhaps a better way of proving the identity and extent of the land claimed is by the claimant filing a survey plan reflecting all the features of the land showing clearly the boundaries. See *Awote v. Owodunni* (No. 2)<sup>15</sup>

In *Ogedengbe v. Balogun*<sup>16</sup>, Onnoghen JSC stated thus:-

It is settled law that for a plaintiff to succeed in a claim for declaration of title to land he must establish with certainty the identity of the land whose title he claims without which his claim must fail. It is also settled that the identity of the land in dispute is usually established by identifying the boundary features or marks and the people with whom the claimant shares the boundaries of the said land with.

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<sup>11</sup> (1987) 4 NWLR (Pt. 63) 1.

<sup>12</sup> (2007)2 NWLR (Pt. 1018)312 at 348.

<sup>13</sup> (2011) 35 WRN 41.

<sup>14</sup> (2004)7 NWLR (Pt. 902)227 at 249.

<sup>15</sup> (1987) 2 NWLR (Pt. 57) 5.

<sup>16</sup> (2007) 30 WRN 47 at p. 74, lines 35-40.

### **On whose duty is it to identify and prove the existing boundaries of the land claimed**

It is the duty of the plaintiff to identify and prove the existing boundaries. The court held in *Lordye v. Ihiyambe*<sup>17</sup> that it is for the plaintiff to identify and prove the existing boundaries and where none is identified and proved; the court has no power to demarcate one. In the cases of *Adeosun v. Jibesin*<sup>18</sup> and *Nwogo v. Njoku*<sup>19</sup> the court held as follows:

It is trite law that before a declaration of title to land is granted, the land to which the claim relates must be identified with certainty and that it is the duty of the plaintiff in such a case to show the court clearly the area of the land to which the claim relates, and if it is not so ascertained, the claim must fail.

In *Olokunlade v. Ademiloyo*<sup>20</sup> Abba-Aji, J.C.A has to say:-

The need to prove the identity of the land in dispute with certainty will arise in every case where the defendant joins issue with the plaintiff on the question of the identity of the land in dispute. In such cases, the first duty of the plaintiff is to prove the boundaries and identity of the land with certainty. See also *Nwogo v. Njoku* (supra) at p.579, *Ezendu vs. Obiagwu* (1986)2 NWLR (pt.21)208 at 220, (1986)3SC 1.

### **Where the identity of the land in dispute is known to the parties**

As a matter of fact and this is also settled that where the identity of the land in dispute is known by the parties, no plan is necessary. Absence of a plan is not fatal to a plaintiff's claim, if proper description of the land is available in the proceedings. See *Etiko v. Aroyewin*<sup>21</sup>, *Araba v. Asanlu*,<sup>22</sup> *Chief Sopui II v. Chief Agbonzo III*<sup>23</sup>, *Atolagbe v. Shorun*<sup>24</sup> just to mention a few. Indeed, and this is also settled that where the identity of the land in dispute is not clear to the defendant, he could or should in fact apply for further particulars.

### **Production and tendering of Survey Plan**

The production and tendering of a survey plan is one of the ways in which evidence can be led to prove the boundaries of a land in dispute. See also the case of *Chief Emiri & 4 Ors v. Chief Imieyeh & Anor.*<sup>25</sup> But a plan is not a *sine quo non*. See the case of *Akpagbue & Anor v. Ogu & Ors.*<sup>26</sup>

Some description however, is necessary to make a disputed land, ascertainable. See *Chief Sopui II v. Chief Agbonzo.*<sup>27</sup> See also the cases of *Alli v. Alesinloye*,<sup>28</sup> *Chief Emiri & Ors v. Chief Imieyeh & Anor.*<sup>29</sup>

### **On proper Order the court should make where a plaintiff in an action for declaration of title fails to prove the boundaries of the land in dispute**

It is also formally settled that where a plaintiff in an action for declaration of title, fails to prove the boundaries of the land he is claiming, he has failed by that omission to prove his case and the

<sup>17</sup> (2000)12 SC (Pt.11)126 at 130, (2000)15 NWLR (Pt. 692) 675.

<sup>18</sup> (2001)14 WRN 106, (2001)11 NWLR (Pt. 724)290 at 302.

<sup>19</sup> (1990)3 NWLR (Pt. 140)570 at 581.

<sup>20</sup> (2011) 25 WRN 41, at p.60 lines 15 – 30.

<sup>21</sup> (1959) 4 SC 129; (1953) SCNLR 308.

<sup>22</sup> (1980) 5-7 SC 78, (1980) NSCC 213.

<sup>23</sup> (1951) 13 WACA 741 at 742.

<sup>24</sup> (1985) 1 NWLR (Pt. 2) 360, (1985)16 NSCC 472, (1985)4 SC 250 at 275.

<sup>25</sup> (1999)4 NWLR (Pt.595)442 at 463, 465,(1999)4 SCNJ 1.

<sup>26</sup> (1976) 6 SC 42 at 45-46.

<sup>27</sup> (1951) 13 WACA 741 at 742.

<sup>28</sup> (2006) WRN 1; (2000) FWLR (Pt.15) 2610, (2000)6 NWLR (Pt. 660) 178 at 215, (2000) 4 SCNJ 16.

<sup>29</sup> *Supra*.

proper order which the court should make in such circumstances is usually one of dismissed of the claim. See *Amata v. Maduekwe*<sup>30</sup>, *Alade v. Dina*<sup>31</sup>, *Epi & Anor v. Aigbedion*,<sup>32</sup> *Ugbo v. Nwokeke*.<sup>33</sup> Indeed, it is also settled that inaccurate plan, will defeat a plaintiff's claim. This is also the case, if the description of the land in dispute contradicts the plan. In *John Imade v. Odemwingie Otabor*<sup>34</sup> the plaintiff (now respondent at the Supreme Court) sued the defendant (now appellant) claiming for declaration of title, among other reliefs, in respect of a piece or parcel of land lying and being at Benin City and covered by Certificate of Occupancy No. BDRS. On discovering that the plan attached to the said Certificate of Occupancy was that of a piece of land 2 miles distant from the land in dispute, he sought to have the Ministry of Lands substitute the plan of the land in dispute for that plan. The ministry refused. He subsequently instituted the action leading to this appeal against the defendant who also claimed the land in dispute. The defendant, for his part, also laid claim to the land in dispute and traced his root of title.

At the close of trial and after addresses by learned counsel for the parties, the learned trial judge, in a reserved judgment, held that the plaintiff had not made out a case to warrant the reliefs sought and dismissed his case with costs to the defendant. Being dissatisfied with this judgment the plaintiff appealed to the Court of Appeal which reversed the judgment of the trial High Court and entered judgment in favour of the plaintiff on his claims (a) and (c). The defendant appealed against this judgment to the Supreme Court. The Supreme Court allowed the appeal, set aside the judgment of the Court of Appeal and order for costs made therein, and restored the judgment of the trial High Court (Akensua, J.) dismissing plaintiff's case. In respect of the issue 2 raised for determination by the appellant, the Supreme Court, per Ogundare, J. S. C., held thus:

I do not deem it necessary to consider the arguments advanced on this issue. It is sufficient to say that as the plan attached to the Certificate of Occupancy (Exhibit D) issued to the plaintiff is of a piece of land two miles away from the land in dispute; that certificate confers no right or title to the plaintiff in respect of the land in dispute.

#### **Duty on Defendant who wants to dispute either boundaries or features on survey plan pleaded by the plaintiff to come by way of clear and specific traverse**

The court held in the case of *Nwadike v. Ibekwe*<sup>35</sup> that the defendants' statement of defence did not specifically question the accuracy of the plaintiffs' plan nor did it specifically make an issue of the boundaries or deny any of the features on that plan. Rather the defendants pleaded their own plan No. PO/E- 147/72. The Supreme Court in many cases like *Elias v. Omo Bare*<sup>36</sup> and especially in *Omorie v. Idugiemwanye*<sup>37</sup> held that when a plaintiff pleads and serves a plan showing clearly the boundaries and the features of the land in dispute, the defendant who wants to dispute either the boundaries or the features must come by way of clear and specific traverse. A mere general traverse will not be enough. If that is not done, then, admitting the plan in evidence will be sufficient proof of those boundaries and features.

The facts of *Nwadike v. Ibekwe*<sup>38</sup> are that the plaintiffs/respondents instituted an action in the High Court of Justice of the former East Central State of Nigeria against the defendants/appellants

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<sup>30</sup> (1954)14 WACA 580.

<sup>31</sup> (1943) 17 NLR 32.

<sup>32</sup> (1975)1 NMLR 31; (1975) 5 UILR (Pt.1) 157.

<sup>33</sup> 6 ENLR 106.

<sup>34</sup> (1998) 3 KLR (Pt. 59).

<sup>35</sup> (2004) 24 WRN 32, Ratio 11.

<sup>36</sup> (1982) 5 SC 38-39 ; (1982) ALL NLR 75.

<sup>37</sup> (1982) 2 NWLR (Pt. 5) 41 at page 60.

<sup>38</sup> *Supra*.

claiming jointly and severally a declaration of title to a piece or parcel of land known as and called "Ohia Ukwu Eluama" #100.00 (N200.00) damages for trespass and an injunction restricting the defendants from further entering the land in dispute. Pleadings were filed and delivered. The case eventually proceeded to trial before Johnson J. in the High Court of Imo State, Orlu Judicial Division holden at Nkwerre. The learned trial Judge after listening to the parties and their witnesses in a reserved judgment delivered on 16/6/80 found for the plaintiffs/respondents as per their claims. The defendants were not satisfied with the judgment and appealed to the Court of Appeal. Their appeal was dismissed by the Court of Appeal on 14/5/85. Being yet dissatisfied, the appellants appealed to the Supreme Court.

On the issue of exact boundaries, the Supreme Court held that it is significant to note that the plaintiffs pleaded plan No. EC/400/72. This plan showed the boundaries and the features on the land in dispute. The defendants' statement of defence did not specifically make an issue of the boundaries or deny any of the features on that plan. Rather the defendants pleaded their own plan No. P.O/E. 147/72.

It should be noted that the judgment of the trial court at page 103 was tied onto the plaintiffs' plan No. EC/400/72 tendered as Exhibit A. The Court of Appeal on this issue of boundaries observed at page 22 as follows:

The respondents' statement of claim, their plan Exhibit A and their evidence point conclusively to the boundaries of the land in dispute. If there was any confusion, it was in the plan, Exhibit E, tendered by appellants which showed wider area with various names creating conflicts not helped but aggravated by their evidence..... The plaintiffs/respondents proved the boundaries conclusively and there was no suggestion throughout the trial that the identity of the land in dispute was not known.

### **Conclusion**

From the above analysis, it is pertinent to note that parties seeking for declaration of title to land, whether the plaintiff or the defendant/counter claimant, must ensure that the land in dispute is properly identified before attempting to delve into the other issues in proving the party's entitlement to ownership of the land in dispute.