A PAPER DELIVERED BY ROLAND OTARU, Esq, SAN, FCIArb ON THE TOPIC: *DRAFTING PLEADINGS IN PROOF OF TITLE TO LAND* DELIVERED AT THE CIVIL LITIGATION COMMITTEE CONFERENCE, 2013 ON SECTION OF *LEGAL* PRACTICE OF THE NIGERIAN BAR ASSOCIATION AT BENIN CITY, EDO STATE ON THE 25TH DAY OF APRIL, 2013.

COURTESIES

I am gladdened with joy on the invitation by the Organizing Committee of the section on Legal Practice of the Nigerian Bar Association to deliver this lecture at this forum. May I, therefore, thank the President and Members of the Executive Council of the Nigerian Bar Association (National) and the Chairman and Members of the Organizing Committee of this seminar particularly O.A. Omunuwa, Esq, SAN, OFR for extending this invitation to me to deliver this lecture.

I want to place on record, Ladies and Gentlemen, the dynamism and focus of the President of the Nigerian Bar Association, Chief Okey Wali, SAN and members of his Executive for piloting the affairs of the Nigerian Bar Association to lofty and enviable heights particularly the frequent programmes on Mandatory Continuing Professional Development (CPO) being organized by the Nigerian Bar Association. I, therefore, give kudos to the President and the Members of his Executive for organizing this one day conference on the theme **"challenges of proving Title to land: Whither the Land Use Act, 1978?"**

The theme of this seminar is not only thought provoking but very remarkable. It is remarkable because the NBA as a body is not shirking her responsibility or responsibilities to continually organize seminars in accordance with the Provisions of **Articles 11(1) of (2) (a - e) (3), (4), (5), (6) (a - e) and Article 12 (1)(a) RULES OF PROFESSIONAL CONDUCT FOR LEGAL PRACTITIONERS, 2007.**

Article 11 (1) of the said Rules provides as follows:

> ***"A lawyer who wishes to carry on practice as a legal practitioner shall participate in and satisfy the requirements of the Mandatory Continuing Professional Development (CPO) programme operated by the Nigerian Bar Association"***

From the tenor of Article 11 (1) of the Rules of Professional Conduct, of the legal profession, it is mandatory that lectures, seminars, workshops and conferences on Law approved by the Nigerian Bar Association must be organized. This is to ensure the sustainability of legal education of our teeming members.

The topic of this discourse i.e. **DRAFTING PLEADINGS IN PROOF OF TITLE TO LAND** is coined from the theme of this conference. This topic is very germane because a lot of cases have been lost in court by majority of legal Practitioners because of inadequate or insufficient pleadings in proof of title to land.

I must say straightaway or without mincing words, that the topic: **Drafting pleadings in proof of title to land** does not take into cognizance the practice and procedure of our Area and Customary Courts in Declaration of Title to land. This is because, drafting pleadings in every facet of claims in Area and Customary Courts are unknown and this is why the Supreme Court in the case of **NOIBI V. FIKOLATI & Anor. (1987) NSCC Vol. 18 (pt. 1) Pg. 281 particularly at Pg.287,** ESO, JSC (as he then was) held as follows:

> ***"But then this action was commenced before a customary court where the filing of pleading is not a condition precedent to the commencement of action"***

According to Hon. Justice BELGORE, JSC (as he then was);

> ***"The original complaints in the customary court apart from being very clear in its purport, it is as good as any writ taken in the High Court as it complies perfectly with the requirement of Customary Courts Law"***

I therefore, take it that this topic is restricted to drafting of pleadings in proof of title to land when the action is filed at the High Court. This is particularly so having regard to the decision of the apex court in the case of **ALHAJI KARIMU ADISA .V. EMMANUEL OYINWOLA & 4 Ors (2000) 10 NWLR (Pt. 674) 116 Particularly at pg.173** where the Supreme court held, per Ayoola, JSC (as he then was);

> ***"That section 41 of the Land Use Act did not oust the unlimited jurisdiction of the State High Court as provided by section 236 (1) of the 1979 constitution"***

I have taken time to explain this scenario before going into the main topic in order to bring into fore that where a claim is filed for a Declaration of Title to Land, either Area or Customary Court wherever they exist in Nigeria, drafting of pleadings in Proof of Title to Land is unknown as the various Area and Customary Courts Rules and their respective substantive laws do not make provisions for pleadings to be filed in respect of any claim particularly in respect of declaration of title to land.

DEFINITIONS:

In order to appreciate the enormity or importance of this topic, it is necessary to define some key words in the topic to wit: "**Pleading, Proof, 'title'** and **Land"**

PLEADINGS:

According to the **Black's Law dictionary, 9th Edition, West Publishing Co. 2009 pg.1270, Pleadings** is defined as a formal document in which a

party to a legal proceeding (especially a civil lawsuit) set forth or responds to allegations, claims, denials, or defenses.

In the case of **UDEH V. OKITIPUPA OIL PALM PLC. (2005) 9 NWLR (pt. 929) pg. 58,** Pleadings was defined as all the respective statements served by the parties on each other. Furthermore, in the case of **AWUSE V. ODILI (2005) 16 NWLR (Pt. 952) pg. 443,** it was held that ***the primary function of a pleading is to define and delimit with clarity and precision the real matter in controversy between the parties upon which they can prepare and present their respective cases***. In addition, it also serves the basis upon which the court will be called to adjudicate between them.

PROOF

The Black's Law Dictionary, 9th Edition West Publishing Co. 2009 pg. 1334, defines '**proof'** *as the establishment or refutation of an alleged fact by evidence; the persuasive effect of evidence in the mind of a fact-finder.*

The court, in the case of **Awuse Vs. Odili (supra)** defines 'proof' ***as a process by which the existence of facts is established to the satisfaction of the court.***

TITLE

The Black's Law Dictionary, 9th Edition, West Publishing Co. 2009 pg. 1622 defines **'Title'** as the union of all elements (as ownership, possession and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself. It went further to say that, its the legal evidence of a person's ownership rights in property; an instrument (such as a deed) that constitutes such evidence.

In the case of **NASIRU V. ABUBAKAR (1997) 4 NWLR (pt. 497) pg. 36, 'title'** was defined ***as the means whereby the owner of land has the just possession of his property.*** It is the union of all elements which constitutes ownership. It also means full independent and free ownership. The right to or of ownership of land, the evidence of such ownership. The ownership may be held individually, jointly, in common or in corporate or partnership form. It becomes an absolute title and exclusive title, where the title excludes all others not compatible with it.

LAND

The Black's Law Dictionary, 9th Edition, West Publishing Co. 2009 pg. 955 defines '**Land'** as an immovable and indestructible three dimensional area consisting of a portion of the earth's surface, the space above and below the surface, and everything growing on or permanently affixed to it. Also it is an estate or interest in real property.

According to **John Duddington** in his book **"land Law"** 2nd Edition, 2009 he defined land as follows:

> ***"Land… as mines and minerals whether or not held apart from the surface/ land is not just the actual surface but also land below and airspace above.***
>
> ***Corporeal hereditaments: the land and what is attached to the land. This is expressed in the principle of 'quid quid plantatur solo solo cedit'.***
>
> ***Incorporeal hereditaments: rights over land. These include easements and profits. An estate in Land refers to the right over which a person has to control and use the land. An estate owner is often called the owner of the land.***

Freehold and Leasehold: the difference between them is that freehold estates last for an unlimited time and in practice they are perpetual. Whereas a leasehold estate lasts for a definite time.

A freehold estate is the nearest to absolute ownership recognized by English law"

According to the same author, an interest in Land is a right which a person has over another's land. It is to be noted that, an estate in Land is a right which a person has over his or her land and this includes legal interest and equitable interest.

A legal interest in land is an easement, right or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute. Whereas an equitable interest means that the right was originally only recognized by the court of Chancery, which dealt with equitable right and not by the courts of common law.

Equity is often applied where the application of the strict rules of the common law would not produce a just result. The effect was that equity often did not insist on the observance of formalities such as the need for a right to be granted in a deed.

Therefore, in drafting pleadings in proof of title to land, the Plaintiff or Claimant must in compliance with the Rules of Court state all the material facts and not the evidence upon which the facts are predicated. For instance, **Order 15 Rule 2 of the Edo State High Court (Civil Procedure) Rules, 2012** provides thus:

"Every pleading shall contain a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved and shall, when

necessary be divided into paragraphs numbered consecutively. Dates, sums, and numbers shall be expressed in figures. Pleadings shall be signed by a legal practitioner or by the party if he sues or defends in person."

See also **Order 15 Rule 5(1)** which provides as follows:

"Every allegation of fact in any pleadings, if not specifically denied in the pleadings of the opposite party shall be taken as admitted except as against a person under legal disability"

FUNCTIONS OF PLEADINGS

According to **T. Akinola Aguda** in the 2nd Edition of "**Practice and Procedure of the Supreme Court, Court of Appeal and High Courts of Nigeria",** the main function of pleading is to ascertain with as much certainty as possible in various matters actually in dispute among/between the parties and those in which there is an agreement between them. Pleading must not be evasive but must deal with substantive points between the parties.

One objective of pleading is to define the issues and narrow the scope of controversy between the parties and thus prevent a surprise being sprung upon either party, a pleading must be sufficient, comprehensive and accurate.

In **OGIAMIEN & ANOR V. OGIAMIEN (1967) NWLR pg. 245,** the court held as follows:

"it is not open to a party to depart from his pleading and to put up an entirely new case at the hearing nor can a judge depart from a case as pleaded by the parties"

However, pleadings in a previous case cannot be used as admission against a party in a latter case. On the other hand, a defendant is free to ask for

particulars of any averment contained in the statement of claim even after he has filed the statement of defence.

What and what is to be pleaded either by the Claimant or Defendant in proof of title to land have variously been enunciated and exemplified in various decisions or judgments of our superior courts of record depending on the nature and the type of root(s) of title and all these have been critically examined in the cases cited in this lecture.

According to the Supreme Court in **GEORGE & ORS V. DOMINION FLOUR MILLS LTD. (1963) NSCC Vol. III pg. 54 particularly at pg.59**

> "***The aim of pleading is to give notice of the case to be met which enables either party to prepare his evidence and argue upon the issues raised and saves either from being taken by surprise. As the defense did not plead illegality or allege any facts of illegality, the Plaintiff could not prepare and could not call any evidence in that regard***"

On the other hand, it is imperative on the part of the defendant in proof of title to land to plead special defence(s) if, any and such special defense may be '*res judicata*', '*laches*' and '*acquiescence*' and 'Statute of Limitation'.

It has been held for instance, in a case in which the plaintiff's pleading assert that they have some tenants on the land in dispute, that it is imperative to set out the names of such tenants. See **SURAKATU AMIOLA V. TAIYE OSHOBOJA (1984) 7 SC 68**

However, there is a common confluence from the decisions of our superior courts of record on whom the onus of proof of title to land lies and they are all in one accord at the convergence of the confluence that the 'Proof of title to land' lies on the Claimant/Plaintiff in spite of the weakness of the case of the defendant.

In the locus classicus case of **IDUNDUN & ORS V. OKUMAGBA & ORS [1976] NSCC 445 Pg. 453 – 454, para 45 – 50, FATAI-WILLIAMS, JSC** enunciated the five ways through which ownership of land may be proved viz:

1) By traditional evidence
2) By production of documents of title which must of course, be duly authenticated in the sense that their due execution must be proved, unless they are produced from proper custody in circumstances giving rise to the presumption in favour of due execution in the case of documents twenty years old or more at the date of the contract.
3) By acts of the person (or persons) claiming the land such as selling, leasing or renting out all or part of the land, or farming on it or on a portion of it, are also evidence of ownership, provided the acts extend over a sufficient length of time and are numerous and positive enough as to warrant the inference that the person is the true owner.
4) Acts of long possession and enjoyment of the land may also be *prima facie* evidence of ownership of the particular piece or quantity of land with reference to which such acts are done (see section 66 of the Evidence Act). Such acts of long possession, in a claim of declaration of title (as distinct from a claim for trespass) are really a weapon more of defence than of offence; moreover under section 145 of the Evidence Act, while possession may raise a presumption of ownership, it does not do more and cannot stand when another proves a good title (see **DA COSTA V. IKOMI (1968) 1 ALL NLR 394 pg. 398)**
5) Proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner of the land in dispute, may also rank as a means of proving ownership of the land in dispute.

WHAT TO PLEAD IN A CASE OF TRADITIONAL HISTORY IN PROOF OF TITLE TO LAND

In the case of **EWO V. ANI [2004] 3 NWLR (pt. 861) pg. 619 – 620,** the court held inter alia that:

> ***"A party who relies on traditional history as the foundation of his claim for title to a piece of land must plead and prove facts as to:***
>
> - ***Who founded the land***
> - ***In what manner the land was founded and the circumstances leading to it.***
> - ***The successive persons to who the land thereafter devolved through an unbroken chain or in such a way that there is no gap which cannot be explained."***

In the instant case, the respondents' averments, inter alia, that they have owned and possessed the land in dispute from time to time immemorial communally with the 1st – 15th Appellants and about the disputes over the land in 1943 and 1952 between the parties is not sufficient proof of traditional history.

From the above, it is clear that there is need for sufficient proof by a party who relies on traditional history as a proof of title to land. The sufficiency of proof will be determined by the facts of a particular case.

ON NEED TO TRACE ROOT OF TITLE TO ANCESTORS / PROGENITORS IN PROOF OF TRADITIONAL HISTORY OF TITLE TO LAND

It has been held in the case of **OLE VS. EKEDE [1994] 4 NWLR (Pt. 187) pg. 571,** that:

"Names of Ancestors not pleaded cannot be given in evidence as they go to no issue properly placed before the court in the proceedings… ***It seems to me that as the appellants were also asserting title to the land in dispute, they ought to have pleaded facts and lead evidence:***

- ***About the founding of the land in dispute***
- ***The person who founded the land and exercised original acts of ownership***
- ***The person who has held title or on whom title has devolved in respect of the land since the finding of the land."***

Furthermore, In the case of **A.M. AKINLOYE AND ORS V. BELLO EYIYOLA & ORS (1983) NMLR (pt. 92) pg. 95** the Supreme Court held that:

"evidence of the names or histories of the several ancestors mentioned should not have been given in evidence as they were not pleaded"

In the above case, the respondents pleaded and led evidence of traditional history, various acts of ownership and of long possession which were not validly faulted by the appellants.

EFFECT OF FAILURE TO PLEAD TRADITIONAL HISTORY TRACING ORIGINAL SETTLER ON LAND IN DISPUTE TO THE PLAINTIFF

In the case of **AGOMUO V. AGUWA [1992] 1 NWLR (pt. 216) pg. 237** the court held thus:

"Since the respondents did not plead the names of the son or sons of Azuguro, there is a gap between them and Azuguro's children to show that Agomuo is not a direct descendant of Azuguro. It is not enough to plead the Azuguro was their grand-father. There is no linkage or nexus between them and

Azuguro's children to oust the relationship between the parties on which issue was joined. Since this has not been pleaded, their purported non-relationship by blood with Agomuo is let in the air and consequently, not established.

- In the instant case, the evidence of the respondents on their genealogy from Azuguro which was never pleaded ought to have been discountenanced by the trial court…

ON WHAT PLAINTIFF CLAIMING OWNERSHIP OF LAND BY INHERITANCE MUST PLEAD

In the case of **OKO V. OKENWA [2010] 3 NWLR (pt. 1181) pg. 408** the court held that

"Where a plaintiff claims ownership of land by inheritance, he must prove and plead names and history of the ancestors from whom he derived his title or plead and prove grant, settlement or conquest"

WHAT TO PLEAD IN THE SALE OF FAMILY LAND

In the case of **OLOHUNKUN V. TENIOLA [1999] 5 NWLR (pt. 192) Pg. 501** the court held that:

"It is only a sale of family land by the head of the family with the concurrence or consent of the principal members of the family that is valid"

In the case of **NDUKWE V. ACHA [1998] 6 NWLR (pt. 552) pg. 25** the court held that:

- An allotment of family land under customary law means no more than mere possession or license from the family to make use of the land. The act of allotment would not and cannot entitle the allottee to a declaration of title to the land allocated to him.

- The onus is on the party claiming family property as his personal land to prove that he is in fact entitled to the family land against all other family members.

  "The assertion that Amaghalu's land was given out for farming purposes seasonally could not be equated to partitioning. Significantly, almost all the parcel of land shown….. Depict them as mostly all communally owned; improvement of any kind on family land by a member cannot cause family land to cease from being family property"

It is evidently clear that the appellant had not proved the roots of his title as pleaded.

The burden of proof rests upon the party who substantially asserts the affirmative of an issue and who would fail if no evidence were adduced. The burden of proving exclusive ownership is on the party who pleads so.

In the case of **OLODO V. JOSIAH [2010] 18 NWLR pt. 1225 pg. 653** the court held thus:

> ***"Proof of the title to family land can be done through the strength and cogency of traditional evidence and numerous and positive acts of ownership and possession going back to the founding of the land by the family ancestors"***

WHETHER AN ALLOTTEE OF FAMILY PROPERTY CAN PASS AN ABSOLUTE TITLE IN THE LAND TO THIRD PARTIES

In the case of **BAMGBOSE & ORS V. SHOKO & ORS [1998] 1 N.S.C.C pg. 899** the court held thus:

> ***"The Plaintiff has set out to prove that he inherited the land and ended admitting that it was on allotment; there is a world of difference between allotment and an inheritance, the***

latter usually vesting in the beneficiary an absolute interest in the property without further assurances, and putting to an end to the joint interest of other members of the family in the land. This is not so in the case of an allotment, which does not in any way entitle the allotee under native laws and custom to a declaration of title and he could not pass absolute title to anyone"

When family land is inherited, the beneficiary takes absolutely and the land ceases to be family property. The act of inheritance under customary law vests the property in the beneficiary without further assurances, and puts an end to the joint interest of other members of the family in the land.

All that an allottee gets is the right to occupy and use the land allotted to him. The title to the land remains with the family.

WHAT TO PLEAD IN A LAND CASE ACQUIRED UNDER CUSTOMARY LAW

In the case of **OKONKWO & ANOR V. OKOLO (1988) 1 N.S.C.C pg. 909** the court held thus:

- ***"That a declaration of title under customary law will be made when the court is satisfied of the precise nature of the title and there is evidence before it to establish the claim. Accordingly, it is essential for the party seeking a declaration to state specifically the nature of the title and the terms of the grant.***
- ***If the plaintiff is relying on sale under the customary law; it is good practice to plead such sale as well as the formal pre-requisites of a valid sale under customary law. If on the other hand the root of title is a grant, that too has to be clearly pleaded as well as all the incidents, conditions and nature of the***

grant. ***Pleadings ought to be precise in order to enable the parties and the court identify easily the issues calling for a decision in the case."*** (underlining mine for emphasis)

DECLARATION OF THE TITLE UNDER BENIN CUSTOMARY LAW – WHAT PLAINTIFF MUST PROVE

In the case of **FINNIH V. IMADE [1992] 1 NWLR (pt. 219) pg. 511** the court held thus:

"Before the promulgation of the Land Use Act, title to land in Benin was provable not from the grant or conveyance of the land by any other person but from the date of the approval of a grant by the Oba of Benin. This is because all lands in Benin Division were vested in the Oba of Benin who was the trustee or legal owner thereof who held it on behalf of all Benin people who were beneficiaries thereof.

The whole of Benin City was divided into a number of wards each with its Plot Allotment Committee which made recommendations of "trouble free" plots for grant to grantees. The signature of approval of the Oba of Benin of any application recommended by a Plot Allotment Committee signified the commencement of the title of the grantee who became a beneficial owner of the plot… Oba's approval was the culminating step in a series of steps to be taken in any valid transfer of title in Benin.

Her registered conveyance which she produced could not be of much avail until she proved due compliance with the established practice for grant of land according to Benin Customary Law"

Proof of title under Benin customary Law

In the case of **ONUWAJE V. OGBEIDE [1991] 2NWLR (pt. 178) pg. 151**

It is part of the general law that in a case of competing titles, once a Plaintiff succeeds in tracing his title to a person whose title to ownership has been established, then the onus shifts upon the defendants to show that his own possession is of such a nature as to oust that of an original owner.

PLEADINGS IN COMMUNAL LAND DISPUTES

Where an individual or a group asserts exclusive ownership as against a community's claim to communal ownership, the law is that the onus is on the individual to prove exclusive ownership; see **Eze V. Igiliegbe (1952) 14 WACA 61; Ovie V. Onoriobokirhe (1957) WRNLR 169 at 170**. It is also well established that a claim for declaration whether of title or not is not established by admission as the Plaintiff must satisfy the court by credible evidence that the Claimant is entitled to the declaration. The court does not grant declaration on admissions of parties; it has to be satisfied that the Plaintiff owns the title claimed if the action is one of declaration of title; see **Eze V. Igiliegbe (1952) 14 WACA 61; Ovie V. Onoriobokirhe (1957) WRNLR 169 at 170.**In the case of **Onigbede V. Balogun (1998) 1 NWLR (Pt. 535) 643** the respondents as plaintiffs for themselves and on behalf of **Odoso** family of **Ikare, Akoko, in Suit No. HIK/17/81** claimed against the appellants as defendants the following reliefs:

a. ***Declaration of statutory right of occupancy to all that piece and parcel of land known as Odoso family and situate, lying and being along Ikare- Owo Road, Ikare-Akoko, delineated on plan to be filed thereafter.***

b. ***Forfeiture of all the rights and interest whatsoever of the defendants as customary tenants on the portion of the aforesaid land granted to them by the plaintiffs' family.***
c. ***Perpetual injunction restraining the defendants, their servants, agents, privies and all persons claiming by and through them from further entry on the said portion of the plaintiffs' family land aforementioned.***

The facts of the case on the part of the defendants/applicants was that the parties have lived together in a place called Igbede Quarters, Ikare for ages without any dispute until 1971 when one Chief Samuel Balogun and others on behalf of the plaintiffs/respondents filed an action at Ado Ekiti High Court against Chief Aliu & 3 Ors claiming among others declaration to the land in dispute. The respondents lost the case and appealed to the Western State Court of Appeal and the court made an order of non- suit. Subsequently, the respondents initiated another action at the customary court Ikare to try the issue of status between the plaintiffs and the defendants but lost same and on appeal to the High Court they also lost. On further appeal to the Court of Appeal it was held that the plaintiffs and defendants were not members of the same family.

Whereas, on the part of the plaintiffs/respondents they contended that their forefathers Urere settled in the present quarter including the land in dispute. Odoso, one of the children of Urere was originally the Oba of Edo quarter and he later adopted a Chieftaincy title called 'Eledo' when Ikare community as a whole decided to settle together in a place and so, he moved with his people from their homestead to the present site. The father of Odoso, Urere on arrival from Ile – Ife settled on a large piece of land including the land in dispute where his son Odoso and his offsprings have been farming from time immemorial till today. It was further stated that the appellants were granted a portion of the land in dispute to farm

upon as customary tenants by Odoso. That it was when the appellants refused to perform their customary duties and pay the dues called "Ure udomu" as customary tenants that led to the action instituted in 1971 at Ado Ekiti High Court and the instant action.

At the conclusion of trial, the trial judge granted all the respondents' reliefs and the defendants being aggrieved appealed to the Court of Appeal. The Court of Appeal after hearing the appeal, dismissed same and affirmed the judgment of the lower court.

On what the law requires a litigant, claiming title to a communal land, to prove, **Rowland JCA at page 657 paragraphs A – B** of the report held thus:

> ***"The appellants in paragraph 10 of their amended statement of defence, alleged that Igbede, their ancestor, settled on the land in dispute. But the same appellants in paragraph 7 of their amended statement of defence alleged that their ancestor was Urere and that Urere came down from Ife along with his children, Igbede, Ibakume and Ehor and that each of the children, settled in places which bear their names.***
>
> ***It therefore became necessary for the appellants to plead and prove where Urere, their ancestor settled upon on arrival from Ife. They carry the burden of pleading and proving that they are the owners of the land in dispute , since appellant in my view are estopped by the judgment in appeal No. CA/b/131/88, Balogun & Anor V. Shittu Onigbede & Ors (Exhibit L) pleaded in paragraph 12 of the Reply to the Amended Statement of Defence from asserting their relationship with Urere."***

Another important point made out in the case of **Onigbede V. Balogun (supra)** is that in an action for Declaration of title of a communal land, the community can also claim the relief of forfeiture of the tenancy as both reliefs are not contradictory.

In the case of **Iwuoha V. NIPOST Ltd (2003) 8 NWLR (Pt. 822) 308 per OGUNDARE, JSC at page 345 paragraphs D – E** held thus:

> ***"The essence of the action is, in fact, a dispute between the two communities as to the ownership of the land on which the post office the subject matter of the action is situate. To succeed, the plaintiffs must prove that the land was originally theirs and is situate in their village."***

Legal practitioners representing communities in communal land disputes have to take extra care to ensure that all the requirements of pleadings have been complied with *a fortiori* filing a reply to the new averments raised in a defendant's statement of defence. In the case of **Iwuoha V. NIPOST Ltd (supra)** at **page 341 para B – F , NIKI TOBI, JSC** held thus:

> ***Having said that, the point the Court of Appeal dealt with specific and it is in respect of grant or donation of the land to the British Government in paragraph 8 and of the 2nd defendant's statement of defence. They averred:***
>
> ***"8. The British Government reached Umuduru in 1902 and requested for land to establish a Divisional Headquarters. The chief of Umuduru at the time on behalf of his people granted the government the land verged yellow on the 2nd defendant's plan aforesaid.***

9. The government built a native court thereon, a Rest House for the Administrative officer and Houses for a Divisional Headquarters thereon. The 2nd defendant hereby pleads and will rely on the report issued by the East Central State Census Committee in July, 1973 and entitled:

"Historical Events List of Local Regional and Native Significance" in support of the facts pleaded to show that the Okigwe Division had originally its headquarters at Umuduru and a Native Court at Umuduru within the said land verged yellow."

By the above paragraphs, the 2nd respondent was not claiming ownership of the land in dispute in the air but pleaded specific acts in alienating the land in dispute to the British government. They pleaded specific developmental projects and I expected the appellants to react one way or the other. Pleading acts of ownership is good; but not denying the averments in paragraphs 8 and 9 is bad."

(Underlining supplied for emphasis)

At **paragraph h** of the same report, the learned Law Lord held thus:

"I also come to the same conclusion and it is that under the rules of pleading the appellants are deemed to have admitted that fact."

It is instructive to note that the appellant in the case of **Iwuoha v. NIPOST Ltd (supra)** lost his appeal for failure to file a reply to the new averments raised in the respondents' statement of defence whereas the respondents (as plaintiffs) in the case of **Onigbede v. Balogun (supra)** filed a reply to all the new averments raised in the defendant's statement of defence.

The law places a requirement on a defendant laying claims to a communal land as can be seen in the case of **Onowhosa V. Odiuzuo (1999) 1 NWLR (586) 173** where the Supreme Court held that where a plaintiff leads evidence that a land in dispute is communal property, the onus is on the defendant to establish that the land belongs to him exclusively.

In **PIARO V. TENALO & ANOR (1976) VOL. 10 NSCC pg. 700 particularly at pages 705 – 707,** the Supreme Court held as follows:

> ***"In proof of declaration of title to land, the following must be proved by the Plaintiff, to wit:***
>
> 1. ***Prove by traditional evidence (Abina Bina V. Chief Enwimadu (1953) AC 207 particularly at pages 215 – 216***
> 2. ***Prove by acts of ownership. This is normally provided by acts of person or persons claiming the land such as selling, leasing, letting out all or part of the land or farming on it or on a portion of it or otherwise utilising the land beneficially: all evidence of ownership provided they extended over a sufficient length of time and are numerous and positive enough to warrant the inference i.e. the true owner"***

In ***EKPO V. ITA, 11 NLR 68 & 69.*** The Supreme Court went further:

> ***"We find however, in the <u>pleadings</u> and the evidence a total absence of the facts about:***
>
> 1. ***The founding of Bomu village Kporo, the land in dispute, in particular;***
> 2. ***The persons who founded the land and exercised original acts of ownership and***

3. ***The person who have held title or on whom title has evolved in respect of the land since the founding before the first Plaintiff/Respondent acquired control of the land on behalf of the community"*** at page 706 Paras 10 – 45, the Supreme Court went on and held as follows:

"***we are also unable to see any evidence of acts or series of acts of ownership exercised by the Bomu community or by the 1st Plaintiff/Respondent as paramount Chief on behalf of the community on the Kporo Land or Kporo bush to warrant any presumption that kporo land is the communal land of the Bomu people. Not one of the witnesses testified that he cut sticks from the bush to prop up his yams or that he cut firewood and harvested palm fruit from the palm trees on the land with permission of the 1st Plaintiff/Respondent in accordance with the custom alleged. A general statement of custom of the people without evidence of the activities of the people in support of the custom is of no evidential value in proof of act of ownership.***

The other three modes of proofs of ownership of land which we do not consider relevant to this appeal but which are nevertheless settle by law are:

(1) Proof by production of documents of title which must be authenticated;

(2) Proof of ownership by acts of long possession and enjoyment in respect of the land to which acts are done.

Under section 145 of the Evidence Law, while possession may raise a presumption of ownership it does not do more and cannot stand when another proves good title (see Da Costa V. Ikomi (1968) 1 All NLR 394 at 398)

(3) Proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connect or adjacent land would in addition be the owner of the land in dispute, may rank also as a means of proving ownership of the land in dispute. (see section 45 of the Evidence Law (see Higgs V. Nassauvian Ltd.(1975) AC 464). In that case which went on appeal to the Privy Council from the Bahama Islands, the board commented at P.474 (sir Harry Gibbs, delivering the judgment of the Board) as follows:

"it is clearly settled that acts of possession done on parts of a tract of land to which possessory title is sought may be evidence of possession of the whole.

In Lord Advocate V. Lord Blantyre (1879) 4 App. Cas 770, 791, Lord Blackburn said:

"And all that tend to prove possession as owners of parts of the tracts tend to prove ownership of the whole tract, provided there is such common character of locality as would raise a reasonable inference that if the barons possess one part, they possessed the whole. The weight depend on the nature of the tract, what kind of possession could be had of it and what the kind of possession proved was."

See also **MOMOH (Ikelebe II, the Otaru of Auchi) & 3 ORS V. UMORU (The Aidonogie of South Ibie) & 3 ORS (2011) 15 NWLR (pt. 1270) 217 particularly at pages 247 – 248 where the Supreme Court held as follows:**

"The Onus is on the plaintiff claiming title to land to prove his <u>pleadings</u> that he has acquired title to the land in dispute

under native Law and custom, and not merely to show a better title than the defendant. It is also the duty of the Plaintiff to succeed on the strength of his case based on the preponderance of evidence in the case and he cannot rely on the weakness of the defence case except where such weakness supports his case. The onus does not shift to the defendant until the plaintiff has successfully discharged the onus on him. See (EHOLOR V. OSAYANDE (1992) 6 NWLR (Pt. 249) 524. KODILINYE V. ODU 2 WACA 336 Woluchen V. Gudi (1981) 5 SC 291: Ngene V. Igbo (1991) 7 NWLR (pt. 203) pg. 358"

At page 276 of the same report the Supreme Court held further as follows:

"What is of paramount importance to prove in a land dispute between different countries is not the genealogical background of the communities but: (a) the extent of the area of occupation of each community; (b) the determination of the boundary of the plaintiff's and the defendants; (c) whether the plaintiffs possess exclusive possession of the land in dispute and (d) the extent of the land in dispute"

It is also essential in proof of title to land to plead the names of boundary men or communities as the case may be that shares boundary with the plaintiff or claimant.

According to **Hon. Justice Oputa (JSC)** (as he then was) in his book MORDERN BAR ADVOCACY at pages 139 – 140 he said as follows:

"Acts of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done but also of other lands so situated or connected

therewith by locality or similarity that what is true as to the one piece of land is likely to be true of the other piece of land – section 45 of the Evidence Act refers. Possession must therefore enjoy a very high place of honour in the law of property. This may be the reason why or at least one of the reasons why WEBBER, J. in this case of Ekpo V. Ita 11 NLR 68 held that:

> ***"In a claim for a decree of declaration of title the onus is on a Plaintiff to proof acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant the inference that the Plaintiff were exclusive owners – if the evidence of tradition is inconclusive the case must rest on question of fact"***

According to **HON. JUSTICE OPUTA JSC (as he then was) at pages 141 – 142** of the same book, he said:

> ***"Ekpo V. Ita (supra) did not and could not have laid down a general rule of law, that in every claim for a decree of declaration of title the claimant must prove numerous positive acts of ownership. Rather the Plaintiff in that case based his claim on traditional evidence (which was inconclusive) and on acts of ownership."***

REQUIREMENT OF PLEADINGS ON THE IDENTITY OF THE LAND IN DISPUTE

The first and paramount duty on a plaintiff in an action for declaration of title to land is to prove with precision and certainty the area of land over which he claims. See the cases of **Okochi V. Animkwoi 92003) 18 NWLR (Pt. 851) 1 at 21 and Udeze V. Chidebe (1990) 1 NWLR (Pt. 125) 141.** Where a plaintiff fails to lead satisfactory evidence of boundaries

of the land in dispute which he claims, the action must fail. See **Aboyeji V. Momoh (1994) 4 NWLR (Pt. 341) 646, Arabe V. Asanlu (1980) 5-7 SC 52**

The parties to a lawsuit have the duty to sufficiently plead and prove the identity of the land in dispute. The Supreme Court in the case of **Ogbogu V. Ugwuegbu (2003) 10 NWLR (Pt. 827) 189** stated that the court can rely on a survey plan filed by a party to a land matter for the identification of the disputed area if the plan corresponds with the land to which parties lay claim and relates to the land in dispute.

The essence of this requirement was set out unequivocally by the apex court in the case of **Nwokidu V. Okanu (2010) 3 NWLR (Pt. 1181) 362 at 391 – 392 para H – G, where Adekeye, JSC** held thus:

> ***"Where a plaintiff claims for declaration and injunction, the area of land in dispute must be properly identified in view of the order for injunction which cannot be granted in respect of an undefined area. It is, therefore, trite that a plaintiff who claims a declaration of title to land must prove clearly the area of the land to which his claim relates and the boundaries thereof. The land must be described with certainly so as to entitle him to an order of injunction. It is a basic step in a claim for declaration. If he failed to prove the boundaries of the land he asserts to be in dispute or did not satisfactorily describe the dimension and locality or the description contradicts the plan – the proper order to make is one of dismissal of claim. A relief of declaration of title being discretionary cannot be granted by any court when the identity of the land is not clearly and unambiguously established.***

When a plaintiff fails to establish the identity of the land to which his claim of ownership or title relates his evidence at the trial whether oral or documentary cannot in law grant a declaration of title in his favour.

Baruwa v. Ogunshola (1938) 4 WACA 159

Awote V. Owodunni (No. 2) (1987) 2 NWLR (Pt. 108) Pg 192

Odiche V. Chibogwu (1994) 7 NWLR (Pt. 354) Pg. 78

Agbonifo V. Aiwereoba (1988) 1 NWLR (Pt. 70) Pg 325

Okedare V. Adebara (1994) 6 NWLR (Pt. 349) Pg. 157

The mere mention of the name of the land without stating clearly the area of the land to which the claim relates is not enough description.

Udofia V. Afia (1940) 6 WACA 216

Oluwi V. Eniola (1967) NMLR Pg. 339

Udeze V. Chidebe (1990) 1 NWLR (Pt. 125) 141

In other words, where the identity of the land does not arise from the pleadings, particularly where the defendant by his pleadings admits the description, location, features and dimension of the land, the identity of the disputed land is not a question and does not require proof."

Flowing from the above case, it is not in all cases that a survey plan is required in identifying a disputed land in land matters. See the case of **Tanko V. Echendu (2011) 18 NWLR (Pt. 1224) 253** where **ONNOGHEN, JSC at page 281 para A – B** held thus:

"It is appreciated that in land matters such as this, a survey plan is very helpful in determining the extent to which the claim is made but that does not apply in all cases particularly where the identity of the land is not disputed and the respondent has conceded title to the appellant, being common "neighbours" or people who share a common boundary."

In the case of **Efetiroroje V. Olepalefe II (1991) 5 NWLR (Pt. 193) 517 at 533 para E, KARIBI – WHYTE, JSC** held thus:

> ***"Although a plan is very valuable in the determination of certainty of the land subject matter of declaration, a court can grant a declaration in the absence of a survey plan. The acid test being the ascertainment of the land subject matter of the declaration with "definitive certainty" so that a surveyor taking the record of proceedings can produce a plan showing accurately the land to which title has been granted. Thus, the production of a survey plan is not a sine qua non to an award of declaration of title – See* Arabe V. Asanlu (1980) 5-7 SC 52; Okpaloka V. Umeh (1976) 0/10 SC 269."**

In the unreported case of **Mr. Sampson Adumukpo Adebo V. Mr. Augustine Jawa & 2 ors, Suit No: HIG/6/2007** delivered on 1st day of December, 2011 by Hon. Justice A.N. Erhabor, a judge of the High Court of Justice, Edo State, held as follows in respect of the necessity of pleading the identity of land in dispute by the Plaintiff or Claimant:

> ***"I agree with the submission of learned Counsel that the plaintiff and his witness have not adduced such evidence as to sufficiently identify the land in dispute with such clarity, lucidity, perspicuity, unambiguity, and limpidity such that a surveyor on the basis of the evidence adduced, can produce a survey plan accurately***

identifying the land in dispute with precision over which the Plaintiff's claims of declaration of title and other reliefs can be made.

The issue of identity of the land in an action for declaration of title to land is very fundamental. The onus is on the plaintiff seeking the declaration to establish the precise identity of the land he is seeking the declaration. This is to enable the Court know the exact area or acreage of the land in dispute to give him judgment if he is able to prove title.

In an action where the plaintiff clams a declaration of title to land and fails to give the exact and identity of the land he is claiming his action should be dismissed. See **Rafai V. Rikett 2 WACA 98. Arabe V. Asanlu (1980) 5 – 7 SC 52. Gbadamosi V. Dairo (2007) 3 MJC 1. Ezukwu V. Ukachukwu (2004) 17 NWLR (part) 902 227.** *Where parties are not ad idem facit on the identity of the land in dispute, the burden is on the party claiming to prove the identity of the land in dispute, the burden is on the party claiming title to prove the identity of the land. And this can be done by specific and unequivocal evidence as to the boundaries of the land in dispute. See* **Odesanya V. Ewedemi (1962) 1 ANLR 370.** *The court will not grant a decree of declaration of title in respect of an undefined area. see* **Oduchie V. Chibogwu (1994) 7 NWLR (part 354) 78. Umesui V. Onuaguluehi (1995) 9 NWLR (part 421) 515. Nnadozie V. Omesu (1996) 5 NWLR (part 446).** *I am also bound by the statement of Ogbuagu JSC referred to in the written address of defense counsel. In the Supreme Court case of* **Ogedegbe V. Balogun (2007) ALLFWLR part 366, Page 615 particularly at 628** *where he sated as follows: "it is also firmly 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 proper order which the court should make in such circumstances is usually one of dismissal of the claim. See also* Amaka V. Maduku 14 WACA 580. Epi & anor V. Aigbedion (1975-) U.I.L.C.R (Part 11) 157.**

In an action for declaration of title to land where both parties have filed a survey plan, there is a bounding duty on the plaintiff to file a composite plan relating the two survey plans, where the plaintiff fails to do so the consequence is that any finding made on it by the trial court is liable to be set aside on appeal. See the case of **Bankole V. Dada (2003) 11 NWLR (Pt. 830) 174 at 224 – 225 para. F – E** where **ONALAJA, JCA** held thus;

"In the instant case where survey plans exhibits B and G were tendered the respondent to establish the disputed land with definitive certainty has the burden to relate the two disputed survey plans to show with certainty whether the disputed land covers the same piece or parcel of land in dispute the desirability of filing composite plan was considered by the Supreme Court in John Bankole & 3 Ors. (for themselves and on behalf of the Beku Onimada family) V. Mojidi Pelu & 3 Ors (for themselves and on behalf of the Osunba family) (1991) 8 NWLR (Pt. 211) page 523 held 3 per* Nnaemeka – Agu, JSC *at 550 thus:

"I need scarcely comment on who should have filed a composite plan, the plaintiffs or defendants. It is a recognized principle in these land cases that, deriving from the fact that the onus of proof is not only on the plaintiff but also is quite high, a well known stratagem by and weapon for the defence is to cause confusion. When, as in this

case, upon a view of the cases put up by both sides a confusion occurs, it is still the duty of the plaintiff who has to establish with certainty the identity of the land he claim in order to succeed, to file a composite plan to show the relative positions of the areas claimed by either side. This is different from the position in Elias V. Suleiman (1973) 1 ALL NLR (Pt.2) 282 where the defendants needed a composite plan in order to meaningfully get up its own case" followed and applied in Polycarp Ubochi Nnadi V. Damian Ositadinma Chukwu Emeka Okoro (1998) 1 NWLR (Pt. 535) page 573 at 605; Ngilari V. Mothercat Ltd (1999) 13 NWLR (Pt. 636) page 626 SC.

In the instant appeal appellant relied on exhibit G survey plan and that the land verged Blue was the land in dispute between the parties whereas the land in dispute in exhibit B was verged red, exhibit G was not connected to exhibit B there was no link between the area verged Blue in exhibit G and the area verged Red in exhibit B. The Learned trial Judge at page 321 stated:

"The land in dispute on both exhibits "B" and "G" are one and the same."

This finding lacked the basis on how the land were the same as the area verged Blue in exhibit G was not shown in exhibit B, the only certainty of the identity was by a composite plan so the finding was perverse. As an appellate court I can disturb this finding of fact, therefore respondent has not shown with definitive certainty the identity of the land in dispute.

It is worthy of note that a defendant seeking to rely on a plea of estoppel per *rem judicatem* or a plea of the doctrine of standing – by in a land matter is not required to plead a survey plan to identify the piece of land. See the case of **Kpansanagi V. Shabako (1993) 5 NWLR (Pt. 291) 67** where the Court of Appeal, Kaduna Division held that it is not fatal to a plea of estoppel *per rem judicatem* or a plea of the doctrine of standing by that there is no plan identifying a piece or parcel of land as the one earlier on litigated upon. As long as a whole parcel of land is described by name in a judgment every inch of that land named is bound by the judgment and no re-litigation on the same named land will be allowed.

A litigant in an action for declaration of title seeking to prove his title vide a document of title has a duty of establishing the identity of the land in issue in default of which his action will fail. In the case of **Pever V. Adaa (1998) 3 NWLR (Pt. 540) 129 at pages 140 – 141, para D – A, EDOZIE , JCA** on this issued held thus:

> ***"The simple and crucial question that arises for determination in this appeal is whether the respondent's Certificate of Occupancy No. 1883 Exhibit 'A' is of such a probative value as to establish that the land in dispute was granted to him by the Gboko Local Government, was the respondent granted the land in dispute per the Certificate of Occupancy, Exhibit 'A'?***
>
> ***For a document such as a Certificate of Occupancy to be relied upon as a root of title to a piece of land, such a document must relate to an identifiable piece of land. This can be achieved in several ways, such as – by describing accurately the boundaries of the land in question, or by annexing a survey plan of the land or by reference to a particular plot of land in a layout plan. In the respondent's***

Certificate of Occupancy Exhibit 'A', it is observed that that part of it reads as follows

"Schedule – Description and Plan of Land

i. ***Number of the plots … 1883***
ii. ***Town/village in which situate …. Gboko South***
iii. ***Location/warm of the town/village in which situate ---- South***
iv. ***Approved size of plot …. 100' X 50'***
v. ***Annexed plan Gboko L.A. Survey Plan No. ……"***

It is pertinent to observe that the space provided in the above Exh. A for the survey plan of the land or plot being granted is blank. The implication is that the survey plan of the land in question was not annexed to the Certificate of Occupancy Exh. 'A'. A grant of an unidentifiable plot of land measuring 100' X 50' confers on the grantee title to no land. The sum total of all I have been saying is that the respondent's Certificate of title Exh 'A' conferred no title of any piece of land to the respondent.

THE INGREDIENTS AND PROOF OF PLEDGE OF LAND UNDER CUSTOMARY LAW

In the case of **Ezike V. Egbuaba (2008) 11 NWLR (Pt. 1099) 627 the Court of Appeal, Port Harcourt Division** set out what a litigant in an action for pledge of land under customary land law must prove thus:

a. That the pledge took place in the presence of witnesses;
b. The parties to the pledge;
c. The pledge sum;
d. Putting of the pledgee into possession; and
e. The mode of redemption of the pledged property.

It is pertinent to refer to the provisions of Section 66 (formerly Section 45 of the old Evidence Act) of the Evidence Act, 2011 which provides thus:

"When the title to or interest in family or communal land is in issue, oral evidence of family or communal traditional concerning such title or interest is admissible."

In the case of **Morenikeji V. Adegbosin (2003) 8 NWLR (Pt. 823) 612 at Pp 654 – 5 para H – B,** the Supreme Court said that oral tradition of how a family own land is admissible hear – say by virtue of this section.

There is every tendency for a claimant in an action on customary pledge of land to seek to rely on the provisions of Section 66 of the Evidence Act. However, the Court has made a pronouncement on that in the case of **Akuchie V. Nwamadi (1992) 8 NWLR (Pt. 258) 214** where Court of Appeal held thus:

"Where a plaintiff bases his claim on a pledge he cannot rely on ownership of adjoining land to the land in dispute, for the purpose of putting Section 45 of the Evidence Act in operation moreso where there is dispute as to the ownership of the said adjoining land.'

PLEADINGS IN GIFT OF LAND

In a claim relating to gift of land the Plaintiff or Claimant must plead an unconditional gift of land made by the donor which is validly executed and cannot be revoked in the absence of fraud, mistake, misrepresentation or other invalidating cause. It can only be revoked if the donor reserves the right to revoke it see **Imah V. Okogbe (1993) 9 NWLR (pt. 316) 159 particularly at 173.**

> ***"This gift of grant has few common essential requirements especially if the grant or gift is under Customary Law, to wit:***

(a) there must be publicity of the grant or gift - this is because this is usually a public act concluded in the presence of witnesses representing the families of the grantor and that of the grantee and the extent of this grant is usually demarcated either by planting boundary trees or by placing moulds of earth on the boundaries, etc. and

***(b) by "symbolic handling ceremony" which entails either breaking, sharing and eating of kola nuts and pouring of libation by the grantor and also in most parts of Nigeria especially in Igbo land, a goat is killed on the site to signify the transfer of radical title to the grantee or vendee see* Cole V. Folami (1956) 1 FSC 88 at 68; Erinosho V. Owokoniran & Anor (1965) NNLR 479."**

However, in our modern system of land transaction if the land was a gift, grant or sale, the plaintiff must plead written documents of such transaction in transferring title from the grantor to the grantee. The advocate should therefore decide before he files his pleadings whether he is relying on transfer of radical title in accordance with Native Law and Custom. However, where a claimant for title relies on purchase or grant made under English Law, he has to ensure that he is armed with a document which alone can transfer title to him, that is, a registered conveyance.

Accordance to **Justice Oputa JSC at page 145** of his book, he said as follows:

> ***"difficulties arise where the sale or grant is not covered by any registered conveyance. It is here that the advocate needs to do his homework and do it well before rushing to court. What then will be the effect of a document, purporting to transfer title to land which is not registered?***

Answer – the answer is – it depends on whether the document is an instrument or a memorandum. Any document made in connection with a transaction at law can belong to the group known as memorandum or else it will be an instrument. A memorandum is made subsequent to the agreement or the transaction which it records. Its main aim is to preserve in some permanent form, matters which might otherwise be in the legal effect produced by some other transaction.

An instrument produces a legal effect itself. It is a document by which one party (the grantor confers, transfers, limits, changes or extinguishes in favour of another party (grantee) any right or title to, or interest in land"

(See section 2 land instrument registration law Cap 82)

It is pertinent to note that under the Land Use Act, 1978, a Customary Right of Occupancy is usually granted by a Local Government in respect of land in rural areas while the governor of a state grants the Statutory Right of Occupancy in respect of the land in an urban area. This is why the Supreme Court in the case of **Abioye V. Yakubu (1991) 5 – 7 SC page 72** which a judgment of a full court of the Supreme Court on the interpretation of the relevant provisions of the Land Use Act, 1978 held as follows:

"A right of occupancy whether customary or statutory vest possession in the owner of the right of occupancy the Land Use Act was not intended to transfer the possession of the land from the owner to the tenant by when the owner is in possession."

WHAT A DEFENDANT RELYING ON PLEA OF LACHES AND ACQUIESCENCE MUST DO

In the case of **Ageh V. Tortya (2003) 6 NWLR (Pt. 816) 385** the Court of Appeal, Jos Division had this to say on the doctrine of Laches and acquiescence thus:

"Laches and acquiescence refer to a party's conduct in recognizing the existence of a transaction and showing intention to permit it to be carried into effect. The doctrines connote neglect to assert a right or claim, which taken together with lapse of time and other circumstances causing prejudice to the adverse party, operate as a bar in the court of equity as equity aids the vigilant and not those who slumber on their rights without delay there can be no laches."

For a defendant in a land matter to successfully rely on the plea of laches and acquiescence, such a defendant must specifically plead same. See the case of **Ilona V. Idakwo (2003) 11 NWLR (Pt. 830) 53 at 89 – 90, paras F – G, where Edozie, JSC** held thus:

"It is elementary law that the defences of estoppel or acquiescence must be pleaded by the party relying on it: Egbe V. Adefarasin (1987) 1 NWLR (Pt. 47) 1. It is not necessary to plead the defences in any particular manner so long as the matter constituting the defences are stated in such a way as to show clearly that the party pleading relies upon them as a defence."

I will not end this lecture without referring to the decision of the full court of the Supreme Court in the celebrated case of **Elias V. Chief Timothy – Omobare (1982) 5 SC 13** which lead judgment was delivered by that erudite jurist Hon. Justice Udo Udoma, JSC, a case that arose from the old Bendel state in respect of declaration of title to land by the

Plaintiff/Appellant which also stated in extenso the essential facts to be pleaded in a declaration of title to land by a Plaintiff, **particularly at page 23 thus:**

> ***"If there was ever a land case completely starved of evidence, this is certainly one. This case clearly cries to high heavens in vain to be fed with relevant and admissible evidence. The appellant woefully failed to realize that judges do not act like the oracle at Ife, which is often engaged in crystal gazing and thereafter would proclaim a new Oba in succession to a deceased Oba. Judges cannot perform miracles in the handling of civil claims, and least of all manufacture evidence for the purpose of assisting a plaintiff to win his case. Civil cases, as is well known, are decided on a preponderance of evidence, this is even moreso in a case where a plaintiff seeks to be awarded the discretionary relief of a declaration of title to land. The burden in such a case which rests squarely on the Plaintiff is a heavy one; for it has as far back as 1935 been laid down as a matter of law that a plaintiff seeking a declaration of title to land must establish to the satisfaction of the court by the evidence brought by him that he is entitled to such a declaration. The plaintiff must rely on the strength of his own case and not on the weakness of the case of the defendant whose duty is merely to defend. If the onus of proof is not discharged, the weakness of the defendant's case will not help him and the proper judgment is for the defendant. (see J.M. Kodilinye V. Mbanefo Odu 2 WACA 336 at 337)"***

CONCLUSION: Land can be regarded as the epicenter of the factors of production. The importance of land cannot be over-emphasized and *a fortiori* adequate care must be taken to plead the essential or material facts in order to succeed by a Plaintiff or Claimant.

Once again, I thank you for the honour and privilege to deliver this paper. Ladies and Gentlemen, I am indeed grateful for your attention.

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25th April, 2013

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