

the reasons already advanced, in so far as the execution of the Power of Attorney marked P7 has not been duly proved, Noor Lebbai did not have any power or authority to bind Abdul Cader, and for that reason alone, Deed No. 6165 (P1) cannot operate to convey any title to the Respondents.

I therefore have no difficulty in answering the substantive question 1(b) in the negative and holding that the Deed produced marked P1 does not operate to convey the admitted title of Muhammad Mohideen Cader Saibu Mohideen Sadakku, or the alleged title of Mohideen Abdul Cader, to the Respondents.

Sub-question 1(c) was of course intended to be consequential upon question 1(b) being answered in the negative, and requires some attention, because it raises the question, in that event, whether the Court of Appeal was in error in holding that the Learned District Judge had correctly arrived at the finding that the Respondents had established title to *the subject matter of the action*. It is in this case somewhat difficult to fathom what is meant by the words “the subject matter of the action”, as there has been a great deal of confusion in this regard. It was in view of this confusion that this Court specifically invited learned Counsel to make submissions on the question of the identity of the *corpus*, even though none of the substantive questions on which special leave had been granted by this Court, directly raised any issue in regard to the identity of subject matter of the action from which this appeal arises.

It is trite law that the identity of the property with respect to which a vindicatory action is instituted is as fundamental to the success of the action as the proof of the ownership (*dominium*) of the owner (*dominus*). The passage from Wille’s *Principles of South African Laws* (9th Edition – 2007) at pages 539-540, which I have already quoted in this judgement, stresses that to succeed with an action *rei vindicatio*, which this case clearly is, the owner must prove on a balance of probabilities, not only his or her ownership in the property, but also that the property exists and is *clearly identifiable*. It is also essential to show that the defendant is “in possession or detention of the thing at the moment the action is instituted.” Wille also observes that the rationale for this “is to ensure that the defendant is in a position to comply with an order for restoration.”

The identity of the subject matter is of paramount importance in a *rei vindicatio* action because the object of such an action is to determine ownership of the property, which objective cannot be achieved without the property being clearly identified. Where the property sought to be vindicated consists of land, the land sought to be vindicated must be identified by reference to a survey plan or other equally expeditious method. It is obvious that ownership cannot be ascribed without clear identification of the property that is subjected to such ownership, and furthermore, the ultimate objective of a person seeking to vindicate immovable property by obtaining a writ of execution in terms of Section 323 of the Civil Procedure Code will be frustrated if the fiscal to whom the writ is addressed, cannot clearly identify the property by reference to the decree for the purpose of giving effect to it. It is therefore essential in a vindicatory action, as much as in a partition action, for the *corpus* to be identified with precision.

Doubts in regard to the identity of the land sought to be vindicated in this case arise from the fact that while the Respondents in their petition laid claim to a four acre land known as “Palugahakumbura”, in Mahawela, Pahalabaage situated in the village of Pandiyankulama in Nachcha Tulana of Ulagalla Korale in Hurulu Palata of