

IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION, HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, THE HON. JUSTICE E.O. AHAMIOJE, JUDGE ON
TUESDAY THE 10TH DAY OF NOVEMBER, 2015

BETWEEN:

SUIT NO. B/138/2010

MRS. GRACE AIRHIHENUWA

CLAIMANT

A N D

1. REGISTERED TRUSTEES OF SPIRIT AND
LIFE BIBLE CHURCH

DEFENDANTS

2. MR. AUSTINE EDEGBE

J U D G M E N T

The Claimant's claim against the Defendants jointly and severally is as formulated in paragraph 17 of the Amended Statement of Claim filed on the 22/1/2013, wherein she sought the following reliefs:

- (a) A declaration that I am the person entitled to be granted a Statutory Right of Occupancy over that piece or parcel of land measuring approximately 100ft x 200ft or 26.32m x 60.80 x 27.60m x 61.41m lying and situate along Ralph Jo Drive at ward 37B, Evboriaria, Benin-Sapele Road, Benin City.
- (b) The sum of N2,000,000.00 (two million naira) only being general damages for trespass on my land by erecting a church on that piece or parcel of land measuring approximately 100ft x 200ft or 26.32m x 60.80m x 27.60m x 61.41m lying and situate along Ralph Jo Drive at ward 37B, Evboriaria, Benin-Sapele Road, Benin City.

- (c) An order of perpetual injunction restraining the Defendants, their servants, agents, privies and/or any other person claiming through them or on their behalf from trespassing on that my said piece or parcel of land measuring approximately 100ft x 200ft 26.32m x 60.80m x 27.60m x 61.41m lying and situate along Raph Jo Drive at ward 37B, Evboriaria, Benin-Sapele Road, Benin City.

- (d) Any other relief.

The 1st Defendant entered Appearance and filed its processes, whilst the 2nd Defendant did not enter Appearance neither filed any processes nor appeared in Court to defend the suit.

In proof of her claim, the Claimant testified, called three (3) witnesses and tendered several documents. The 1st Defendant called three(3) witnesses in support of its defence and tendered some documents.

The Claimant, Mrs. Grace Airhihenbuwa testified on the 18/6/13 and adopted her written deposition wherein she stated that in February, 1974, she wanted a piece or parcel of land measuring 100ft by 200ft in dimension and approached Evboriaria Community ward 37B, Sapele Road, Benin City. She said that consequent upon this, she

was given two weeks by the Plot Allotment Committee to arrange for a Pointer to follow her to show her some unallotted piece or parcels of land of same dimension that have not been transferred to anybody. That at the expiration of the two weeks, the ward 37B Plot Allotment Committee delegated a pointer (CW 2) to show her the demarcated land of 100ft by 200ft the subject matter of this suit. That after seeing the piece of land showed to her which she liked, herself and the Pointer went back to the Community to inform them that she was satisfied with the land. She said that, she was then given an Application Form to fill by the Secretary (CW 1) of ward 37 Plot Allotment Committee, and given a second appointment to come back and check if the Application has been approved by the Oba of Benin, His Royal Highness, Akenzua II. That when she went back the Plot Allotment Committee through the Secretary, (CW 1), gave her the Approval from the Oba of Benin dated the 19th March, 1974 Exhibit 'A(D)'.

She stated that upon the receipt of Exhibit 'A(D)', she went into immediate possession of the land in dispute in the month of March, 1974 and started farming on the land by cultivating crops like cassava, mangoes, cashew, plantain, vegetable etc without let or hindrance.

That she used to go to the farm with her children. She further said that

sometime in 2002, the 1st Defendant's Pastor, some members and workers trespassed on the said piece of land by bringing sand and other materials on the land and when she and the children confronted them, they said that they had just bought the land from somebody with a view to building a Church. That she and her children reported the matter to the Eboriaria Community which gave her the land in dispute and they summoned a meeting with the 1st Defendant, but they refused to attend. She stated that when the 1st Defendant committed further acts of trespass on the land, she reported to the Oba of Benin who directed that they be invited to the palace. That when they got to the palace, the 1st Defendant informed them and some palace Chiefs that they were not subject to the jurisdiction of the Oba and that they should go to Court.

She stated that on the 7/6/2003, information reached her that the 1st Defendant and their agents were working on the said land, they rushed to stop them and they left momentarily. She stated that in spite of all efforts to ward off the 1st Defendant's workers, they cut down all her crops, fruits etc and started the building of a Church on the land in dispute. She stated that the 1st Defendant has no land anywhere near her piece of land, and does not own the land in dispute.

She further said that when she filed Suit No. B/398/2003 against the Defendants, the 1st Defendant led a counter-affidavit and Exhibited their Oba's Approval, Exhibit "B". She finally prayed the Court to enter judgment in her favour as per her reliefs.

In answer to questions under cross-examination by P.A. Ugheoke, Esq. of learned Counsel for the 1st Defendant, the Claimant said that Exhibit 'A(D)' is her title document to the land in dispute, and the dimension is 100ft by 200ft. She maintained that when they got to the Oba palace, the Defendants said they have nothing to do with the palace and that she should take the matter to Court. She stated that she does not know her boundary neighbours but knows the land in dispute. That she does not know if Ralph Jo has a parcel of land along Ralph Jo Road. She stated that a portion of the land measuring 150ft by 200ft is along Ralph Jo Drive. That she commissioned a surveyor and showed him the dimension of the land. That the surveyor did exactly what she instructed him to do.

Re-examined, she stated that at the time she acquired the land in dispute there was no road known as Ralph Jo Drive or Street. That the area was a bush.

C.W. 1 is Mr. Joseph Owie Ogbeide. He adopted his written deposition wherein he stated that he was the then Secretary to the ward 37B Plot Allotment Committee, Evboriaria, Sepele Road, Benin City. That he was appointed Secretary in 1972 by Oba Akenzua II. He said further that sometime in February, 1974, the Claimant approached their ward 37B Plot Allotment Committee for a plot of land measuring 100ft by 200ft that had not been allotted to anybody. They sent Mr. Richard Omorisiuwa, C.W. 2 who was the Plot Allotment Committee Pointer to take the Claimant to the area where they had mapped out parcels of land of same dimension. They later referred to the Committee and the Claimant said that she liked the land in dispute. That he as the Secretary, he gave the Claimant an Application Form which she filled, the Committee signed their columns and sent it to the Oba of Benin, Oba Akenzua II, who was the trustee of all Benin Land under Bini Native Law and Custom for approval, which was duly approved. After the approval, it was sent back to them and he gave the Approval to the Claimant, Exhibit 'A(D)'. He said that his signature is on Exhibit 'A(D)'.

He stated that sometime in 2002, the Claimant complained to them that somebody trespassed on her land, and to inquire if they

allotted her land to somebody else. They told her that they did not allot the same piece of land to more than one person. That in 2003, the Claimant came again to inform them that it was the 1st Defendant who trespassed on her land. Based on this, they invited the 1st Defendant to a meeting to show them its title Deeds (Oba Approval) to enable them ascertain who gave them the land, but they bluntly refused to attend the meeting. He further said that when the Claimant and the Defendants filed their processes in Court, the Claimant brought a photocopy of the 1st Defendant Oba approval Exhibit 'B(J)' attached to their counter-affidavit filed in 2004. He stated that they observed that the 1st Defendant's Oba's approval, Exhibit 'B(J)' had on it a traditional logo of "Eben and Ada" which they have never had in any of their Oba's Approvals given out throughout their tenure in the Plot Allotment Committee between 1972 – 1978. He maintained that they did not allot any piece of land to the Defendants, and they are not the owners of the land in dispute. That the land in dispute was allotted to the Claimant by ward 37B, Evboriaria Plot Allotment Committee in 1974 when he was Secretary. He said that the Oba's Approval, Exhibit 'B(J)', being paraded by the 1st

Defendant did not emanate from ward 37B Evboriaria Plot Allotment Committee.

Cross-examined by P. A. Ugheoke Esq. of learned Counsel for the 1st Defendant, C.W 1 stated that his signatures on Exhibits “A and B (D and J)” are not the same. That the signature on Exhibit ‘A(D)’ is the one he sent to the palace of Oba of Benin when he was appointed Secretary of the Plot Allotment Committee. He said that it is the Application form they send to the Oba of a prospective Applicant that the Oba of Benin normally append his signature. That he was appointed Secretary of the Plot Allotment Committee by Oba Akenzua II in 1972 and acted till 1978.

Next to testify is Mr. Richard Omorisiuwa, C.W. 2. He adopted his written deposition wherein he stated that in 1971, the Evboriaria Community appointed him as the Pointer to the ward 37B, Evboriaria Plot Allotment Committee and held the position till 1976. He further said that sometime in February 1974, the ward 37B Evboriaria Plot Allotment Committee introduced the Claimant to him and directed him to show her the Community’s free Plots of land measuring 100ft by 200ft that had not been allotted to anybody. He then took the Claimant and showed her some of the free Plots of 100ft by 200ft that

had not been allotted, and the Claimant chose the land in dispute lying and situate along a Road now called Raph Jo Drive, at ward 37B Evboriaria, Benin-Sapele Road, Benin City. That sometime in 2003, the Claimant came to complain to them that the 1st Defendant trespassed on her land. They invited the 1st Defendant to a peace meeting but the 1st Defendant bluntly refused to attend the meeting. He stated that he saw Exhibit 'B (J)' the 1st Defendant's Oba's approval attached to a counter-affidavit filed in 2004. That he observed and found that it had a traditional logo of "Eben and Ada" which they have never had in any of their Oba's Approvals given out throughout their tenure in the Plot Allotment Committee. He stated that they did not allot any land to the 1st Defendant and the 1st Defendant is not the owner of the land in dispute. He maintained that the land in dispute was allotted to the Claimant by the ward 37B, Evboriaria Plot Allotment Committee in 1974, and that he acted as the pointer. He finally stated that the Oba's Approval, Exhibit 'B (J)' being paraded by the 1st Defendant did not emanate from ward 37B, Evboriaria Plot Allotment Committee.

Cross examined by P.A. Ugheoke, Esq. of learned Counsel for the 1st Defendant C.W. 2 said that he was appointed a Pointer from 1971 – 1976. That he would not know between himself and C.W. 1 who was

appointed first. He listed the names of members of the Plot Allotment Committee to include Chief Ogbeide, Ogieriakhi, Ogunsuyi and one Mr. Robert.

C.W. 3 is Surv. S. O. Ekhosu, a registered licensed Surveyor. He adopted his written deposition wherein he stated that the Claimant commissioned him sometime in 2010 to do a litigation Survey Plan for her in respect of her land at ward 37B, Evboriaria village Area, along Raph Jo Drive, Benin City. He stated that the Claimant showed him her Oba's Approval, took him to the site and showed him the land and its features. That he prepared a litigation plan over the said parcel of land, Exhibit 'E'. He stated that in Exhibit 'E', he indicated all the features found on the land, and he gave a certified copy to the Claimant.

Cross examined by P.A. Ugheoke, Esq. of learned Counsel for the 1st Defendant, C.W. 3 stated that before he prepared Exhibit 'E', the plan, the Claimant took him to the site and handed the original document of the land to him. That the Oba's approval shown to him was a photocopy. That Exhibits 'A' and 'D' are the same. That the dimension of the land in dispute is approximately 100ft by 200ft.

At the close of the case for the Claimant, the 1st Defendant opened her Defence. D.W. 1 is Elder Aisimiewe F. Isiramen. He adopted his written deposition on 30/4/14, wherein he stated that sometime in 1998, a committee was set up by then Bishop Osagiede Gordon for the expansion of the Church to Evboriaria and was a member of the committee charged with the responsibility of finding a land for the Church in Evboriaria. That being a neighbour with the community, he set out to look for a parcel of land of the dimension given to them. He then approached Ralph Jo who told him that his land in the area has been sold and promised to introduce him to his friend, Mr. Austine Edegbe whom they both acquired the land together. He stated that he was eventually introduced to Mr. Austine Edegbe who showed him his land, and told him that he has a common boundary with Ralph Jo. That the said Mr. Austine Edegbe, 2nd Defendant handed the title documents relating to the land measuring 200ft by 100ft to him. He reported back to the 1st Defendant. Thereafter, Pastor Ogbodu, DW 2 who is the Director of lands was mandated to verify his findings and he took him to Ralph Jo who called Mr. Austine Edegbe, their vendor and the land was acquired in 1999 through an outright sale. He said that they paid an initial deposit in

the office of Ralph Jo to the 2nd Defendant who did not come with a receipt but they insisted on a receipt. That Ralph Jo issued them a receipt in his official receipt on behalf of Austine Edegbe. He said that after the final payment, an agreement was then drawn up in which Austine Edegbe signed as the assignor and Ralph Jo as his witness, Exhibit "H". They commenced clearing after the execution of the Agreement. After clearing, they deposited six trips of sand on the land and mounted canopies and commenced worship there. That while the worship was going on, workers were moulding blocks till 2000-2001 when both foundation and the building of the Church commenced. He said that the foundation laying ceremony was performed by Bishop Gordon Osagiede. That while all these activities were going on, nobody challenged them till 2003, when the Claimant brought an action against the 1st Defendant through someone claiming to be the owner. He said that he is not aware of the 1st Defendant going to the palace of the Oba of Benin for adjudication over the matter, and that the 1st Defendant was also not summoned by the Evboriaria Community. That the only dealing the 1st Defendant had with the community was the payment of development levy, and the 1st Defendant was not informed that the land belong to the Claimant. He stated that from

2003 – 2010, the Claimant has taken the 1st Defendant to Court three times and twice the claim was struck out.

Next to testify is D.W. 2, Paster Ogbodu. He adopted his written deposition wherein he stated that the land on which in the Church (1st Defendant) built its Church was acquired by her through an outright sale from the owner, Mr. Austine Edegbe (2nd Defendant) in 1999. He said that the Church in her evangelism programme wanted a parcel of land in Evboriaria Quarters and some members resident there were asked to help scout for one, and D.W. 1 later informed them of this unencumbered land. That as the Director of lands and property of the 1st Defendant, he carried out investigation and later found that Mr. Austine Edegbe, the owner has a common boundary with Ralph Jo who introduced him to them. They agreed on a consideration of N800, 000 in the office of Ralph Jo and his official receipt was issued to them because Mr. Edegbe did not come with his receipt booklet.

Thereafter, they executed a Deed of assignment which both parties signed, and Mr. Austine Edegbe signed as the Assignor while Ralph Jo signed for him as a witness and the Church signed their column Exhibit "H". He tendered their Oba's Approval as Exhibit 'H' and the Deed of

Assignment as Exhibit 'J'. D.W. 2 repeated virtually the D.W. 1's account of how they started development and construction of the Church building in 2001 – 2002 without challenge from anybody until 2003, after completion of the buildings when they were served a writ of summons by the Claimant. He stated that the Claimant previously instituted two suits against them over the same piece of land which was struck out with costs. He maintained that the Claimant is not the owner of the land, but the 1st Defendant having validly acquired same from the rightful owner. He finally urged the Court to dismiss the claim of the Claimant as gold-digging.

D.W. 3 is Mr. Francis U. Iyawe, a registered Surveyor. He adopted his written deposition wherein he stated that the 1st Defendant commissioned him to do litigation Survey Plan in respect of her land at Evboriaria for her sometime in 2012. He stated further that the 1st Defendant presented to him a Deed of Assignment with an attached Oba's Approval, took him to the land and showed him the features. He said that the land is at Evboriaria along Ralph Jo Drive, Benin City. That with the documents presented to him, he prepared the said litigation Survey Plan and showed all the features found on the land. He then gave a certified copy of the plan to the 1st Defendant.

At the close of Defence, learned Counsel for the parties filed their written Addresses in line with the Rules of Court. The first Defendant written Address was filed on the 21/8/14. P.A. Ugheoke, Esq. of learned Counsel for the 1st Defendant gave summary background facts of the case and distilled two issues for determination thus:

1. Whether the Approvals of both the Claimant and the 1st Defendant are one and the same as it relates to the Land in dispute or put differently, whether the Claimant has been able to identify her land thereby entitling her to the reliefs sought.
2. Whether the action of the Claimant is not caught by the doctrine of laches and acquiescence as pleaded in paragraph 13 of the Statement of defence.

Learned Counsel submitted that the Claimant has failed to identify her land as the approval tendered by her relates to land different and distinct from that of the 1st Defendant where her Church building is erected. He referred to paragraph 4 of the Statement of Claim and paragraph 5 of the 1st Defendant's Statement of Defence. He argued that the Claimant never challenged the assertion raised in paragraph 5 (a) – (c) of the 1st Defendant's Statement of Defence. That this suggests that the assertion of the 1st Defendant that the identify of the

land of the Claimant is different from hers remains true and unchallenged, and urged the Court to so hold. He submitted that the Claimant has failed woefully to prove the exact identity of her land.

He further submitted that as per paragraph 4 (a) and (b), the Claimant in this case applied for and was indeed allotted a parcel of land measuring 100ft by 200ft in ward 37B, Evboriaria, Benin City in 1974 this position was confirmed by C.W. 1 in paragraph 5 of his deposition on oath dated 21/1/2013 and filed 22/1/2013. He argued that C.W. 3, the Surveyor who was commissioned to do the litigation Survey Plan differs from the evidence of C.W. 1 – 3 in respect of the dimension of land, and referred to paragraphs 2 – 7 of the Surveyor's deposition on oath. That the litigation survey plan produced by C.W. 3 for the Claimant shows a dimension of 80ft by 200ft verged blue. That the implication of this is that the evidence is at variance with the pleadings and no explanation was given as to the whereabouts of the missing or remaining 20ft. He contended that the land of the 1st Defendant duly acquired from the 2nd Defendant is different from that of the Claimant as the Claimant is merely being speculative of the location of her land or the identify of her land. That the Claimant's failure to produce a property Survey Plan by which her land can be

traced is fatal to her case. He submitted that an action for trespass cannot lie until ownership is established. That failure of the Claimant to prove exactitude of her land and its dimension as per pleading is fatal to her case and urged the Court to so hold, as it is not enough to say that her land is along Ralph Jo Road in Evboriaria, ward 37B. There are so many lands in Ralph Jo with similar dimensions. That the Claimant has failed to trace the location of her land as granting her the relief sought as paragraph 17 (a), (b) and (c) will cause grave injustice to the 1st Defendant.

He submitted that the Defendant tendered another Oba's approval over a plot of land still along Ralph Jo Road, Evboriaria ward 37B with different ward. That the Defendant debunked the claim of the Claimant to the fact that the land is not well known to both parties. He further submitted that the 1st Defendant never disputed whether the Claimant had a plot of land of 200ft by 100ft in Evboriaria but denied that the Claimant's land is not the same land where the 1st Defendant own her Church. That onus of establishing the same land location lies with the claimant which she has failed, refused and neglected to show and established, and cited DADA V. DOSUNMU (SUPRA) RATIO 2 and OGUN V. AKINYELU (2005) 2 MJSC 92 at 95 ratio 2

AND 3. He argued that the Claimant's lead claim is a declaration of title. That from the state of pleading, and evidence led by parties, the location and size of the land is in issue.

He further argued that the Claimant has failed to prove the exact location/position the land and the area being claimed. What is before Court are patches of evidence suggesting speculation as to her land and its size. That the Claimant's Oba approval denied that the land being showed is different from that in the approval. That the Claimant merely super imposed her so called land on that of the 1st Defendant. He submitted that on the acts of possession which is a cardinal principle of ownership, the Claimant has failed to establish any form of act of possession. In a bid to establish act of possession, he reproduce paragraph 5 (f) – (g) of the statement of claim. It was submitted that the 1st Defendant denied ever meeting or seeing any crop whether annual or perennial on the land as same was bushes with rubber trees. That this piece of evidence was duly extracted from D.W. 3 in line with paragraph 7 of the Statement of Defence and paragraph 9 of the 1st Defendant's deposition on oath.

It was further submitted that the Claimant has never at anytime being in possession to suggest ownership as it was the 1st Defendant

that has been in possession from 1999 till date having cleared, disvirgined the forest and built a Church and other structures on the land that it acquired from their predecessor in title in 1999. He submitted that C.W. 3 corroborates the evidence of the 1st Defendant to the effect of acts of possession. That what are contained in the Claimant's litigation survey plan are features belonging to the 1st Defendant. That the Claimant never mentioned in both in her pleadings and evidence that she has building on the land but was destroyed by the 1st Defendant. That the Court must wonder where the C.W. 3 is showing in his Survey Plan ruins of the Claimant's building as destroyed by the 1st Defendant. He urged the Court to jettison such evidence as same is at variance with the pleading. That what C.W. 3 referred to as ruin is the 1st Defendant's children Church. He urged the Court to hold that the land is the property of the 1st Defendant having been in undisturbed possession with varied degree of acts of same without hindrance from 1999 till date, and referred to section 35 of the Evidence Act 2011. He submitted that there is evidence on record that 1st Defendant acquired the land in 1999 from Austin Edegbe whose application for a Plot of land was approved by the Oba in 1977. That in 2002, the work on the land was completed after worshipping on the

land vide a make shift canopies. That this time, the Claimant never raised any objection and the community never stopped the Church from building. That the Claimant's claim is an afterthought and ought to be jettisoned. He urged the Court to so hold, and cited ODUNUKWE V. OFOMATA (2010) 12 MJSC 1 AT 6 RATIO 3.

He finally urged the Court to hold that the evidence of the 1st Defendant in respect of act of possession is more credible, probable and thus be the owner of that land as the Claimant did not and cannot locate her land as contained in her Oba's approval.

On issue two, learned Counsel adopted his argument on issue one and submitted that agreed but not conceding that the land being fought to be taken over now by the Claimant is hers, has she not been estopped by the doctrine of stand by or has she not acquiesced in the possession of the land by the 1st Defendant? He submitted that if at all the Claimant is the owner of the land which is not conceded has been caught by the doctrine of laches and acquiescence same having stood by and watched the 1st Defendant building and developing the land on a honest belief that same belong to it duly acquired in 1999.

He further submitted that the Claimant came to Court by this suit in 2010 in suit No. B/138/2010 and that the 1st Defendant completed

work on the land it acquired in 2002. That the Claimant attempted to approach Court twice in 2003 and 2006, in all these dates, the 1st Defendant has completed work and fenced. He urged the Court to hold that the Claimant having acted mala fide and the 1st Defendant acted bonafide, has waived and acquiesced her right and caught by the doctrine of laches and acquiescence. He argued that no other Oba's approval from the community was tendered by the Claimant through the witness to validate which of the approvals is fake or genuine. That Court should jettison this piece of evidence as same was never supported by pleading and the 1st Defendant is being caught unaware.

He finally submitted that the Claimant claim is hollow, speculative dubious and devoid of merit and ought to be dismissed with costs.

On his part, A.O. Edeki, Esq. of learned Counsel for the Claimant gave a succinct summary of the case as can be gleaned from pages 1 - 5 of his written Address and formulated two issues for determination thus:

ISSUE ONE:

Whether the Claimant has proved her case on the preponderance of evidence or on the balance of probabilities to entitle her to a declaration of title to the piece or parcel of land measuring approximately 100ft x 200ft 26.32m x 60.80m x 27.60m x 61.41m lying and situate

along Ralph Jo Drive at ward 37B, Evboriaria, Benin Sapele Road, Benin City, as claimed.

ISSUE TWO:

Whether the Claimant is entitled to the sum of N2,000,000,00 against the Defendants for trespass and an order of perpetual injunction against the Defendants and their agents, servants, privies and/or any other person claiming through them or on their behalf from trespassing on that Claimant's and piece or parcel of land measuring approximately 100ft x 200ft 26.32m x 60.80m x 27.60m x 61.41m lying and situate along Ralph Jo Drive at ward 37B, Evboriaria, Benin Sapele Road, Benin City, as Claimant.

Arguing issue one, learned Counsel submitted that the Claimant and the Defendants rely on the Benin Customary land acquisition, that is Oba's Approval/grant. That this, coupled with the fact that the Defendants did not counter claim, what is required is to examine whether the Claimant has proved her title to the land in dispute on the preponderance of evidence or on the balance of probabilities. That is whether as the party on whom the burden of proof lies her evidence is more likely to be true or more probable than that of the adverse party. He cited DAODU V. NNPC (1998) 1 NWLR (PT. 538) 335. He submitted that a party seeking a declaration of title must rely on the strength of her case and not on the weakness of the Defendant's case. That she cannot rely on the weakness of the Defendants' case for the purpose of

discharging that burden. However, this proposition of law is subject to the important point that the Defendants' case may itself support the Claimant's case and contained evidence on which the Claimant is entitled to rely, and cited IDENHEN V.OSAMWENKHAE (1997) 10 NWLR (PT.525) 356 AT 369 PARAS F – G, 371 PARAS B – C RATIO 1.

He submitted that the Claimant in her deposition stated how she exhausted the laid down procedure of customary land acquisition method under the Benin Customary Law.

Learned Counsel stated in paragraphs 0.18, 0.19 and 0.20 of his written address facts which cumulated to the granting of Oba's approval to the Claimant in 1974. He further submitted that in the determination of which side of the imaginary scale the evidence adduced on any issue tilts, he listed the procedure laid down in ODOFIN V. MOGAJI (1978) 4 SC 91 AT 94 and INEC V. RAY (2004) 14 NWLR (PT. 892)82 AT 123. It was also submitted that Claimant's evidence, oral and documentary is admissible and relevant. That C.W. 1 and C.W. 2 have given credence to her Oba's approval, Exhibit 'A' and stated that they gave her the land in issue. They said they never gave the land in issue to the Defendants. He contended that the issue of non existence

or use of any Oba's Approval containing the "Eben and Ada" logo in Evboriaria pointed out clearly in the evidence of the C.W. 1 and C.W. 2 who are the Evboriaria ward 37B secretary and Pointer respectively is very material. On the five ways of proving title to land, he cited IDUNDUN and ORS V. OKUMAGBA and ORS 1976 10 NSC 445 AT 453 – 454 and EGWA V. EGWA (2007) 1 NWLR (PT. 1014) 71 AT 74 RATIOS 1 – 3.

He submitted that the Defendants relied on the second way which is (b) production of documents duly authenticated. That instead of authenticating, what we have here is that the C.W. 1 and C.W. 2, the Evboriaria ward 37B Plot Allotment Secretary and Pointer respectively disowned and discredited the Defendants Exhibits "B and H", Oba's Approval.

He argued that this damaging evidence of the C.W. 1 and C.W. 2 was never contradicted nor challenged by the Defendants and their witnesses. He submitted that evidence that is neither attacked nor successfully challenged is deemed to have been admitted and the Court can safely rely on it in the determination of the case, and relied on GOVERNOR OF ZAMFARA STATE V. GYALANCE (2013) 8 NWLR (PT. 1315) 482. He argued that the failure of the Defendants to call any

witness from the Evboriaria Community or Plot Allotment Committee to cast aspersion, even if perfunctorily on the claim of the C.W. 1 and C.W. 2 as regard their claims of being the Secretary and Pointer respectively of the ward 37B Evboriaria during the relevant period of grant strengthens the Claimant's case. That it give credence to their evidence that the Defendant's Oba's Approval containing "Eben and Ada" is not genuine and is not from the Evboriaria ward Plot Allotment Committee. That this makes the evidence of the Claimant to be more likely to true or more probable than that of the Defendants, and cite DAODU V. NNPC (SUPRA). He urged the Court to hold that since the custodians of the authentic Oba's approval in Evboriaria ward 37B Plot Allotment Committee disowned even the type of Oba's Approval used by the transferors of the Defendants and the transferors did not call any witness from any member of the said Ward 37B Plot Allotment Committee or any person who acquired land from the said ward 37B with an Oba's Approval with the "Eben and Ada" logo, it is deemed that they have admitted the evidence. He further urged the Court to hold that the Defendant's Oba Approval tendered severally as Exhibits 'B and H' is not an authentic Oba's Approval from the said ward.

He submitted that the Claimant is claiming radical title to the land measuring 100ft by 200ft lying and situate at Ralph Jo Street, ward 37B, Evboriaria village, Benin City. That where radical title has been successfully proved to reside in the Claimant, the issue of possession of the Church and other structures built on it by the Defendants after being told by the Claimant that the land belong to her take back seat. He referred to Exhibit 'B' and cited AMEEN V. AMAO (2013) 9 NWLR (PT. 1358) 159. That the averments by the Defendants that they built a Church on the land is of no moment, as the land and everything on it belong to Claimant who is the rightful title holder. Quic quid platator solo solo cedit. Whoever owns the land owns whatever is attached to it. He urged the Court to hold that the Claimant has credibly satisfied at least two ways i. e. (a) and (b) out of the above five ways and cited AJAGUN V. AMUSAN (2003) 9 NWLR (PT. 825) 291 AT 294 RATIO 1. He further urged the Court to put the oral and documentary evidence of both parties on that imaginary scale and hold that the evidence of the Claimant and his witnesses is more credible, probable and outweighs those of the Defendants.

He argued that between Claimant's Oba's Approval and the Deferent's Oba's Approval, which was first in time. He submitted that

the Claimant's Oba's Approval was granted in 1974 while that of the Defendant was granted in 1977. That assuming that the Defendant's Oba's Approval which is the root of title was authentic (which is not conceded) the fact that it came later in time renders it invalid. That traditionally, when two people buy land from a common vendor or have a common grant or as in this case the Oba of Benin and the Evboriaria ward 37B Plot Allotment Committee, it is the first in time that gets title because after the sale or grant of the land to the first purchaser there would be nothing left for the vendor to sell or grant to the second purchaser, and cited ADIKE V. OBIARERI (2002) FWLR (PT. 131) 1907 AND ARASE V. ARASE (1981) SC 33. That nemo dat quod non habet – nobody gives that which he does not have.

He submitted that in Benin, in order to prove title to land it must be traced back to the Oba of Benin who holds the land in trust for Benin people as there is no original individual ownership of land in Benin before the Land Use Act came into existence in 1978, and place reliance on IMADE V. OTABOR (1998) 4 NWLR (PT. 544) 20.

He further submitted that the Claimant proved her case by the production of Exhibits A, C, D and E. That the totality of the evidence in this case shows that the Claimant obtained her title from the Oba of

Benin through Evboriaria Plot Allotment Committee ward 37B, Benin City. That in order to obtain land in Benin, the Applicant has to route his or her application through Evboriaria Plot Allotment Committee ward 37B, Benin City. That in order to obtain land in Benin, the Applicant has to route his or her application through the appropriate ward to the Oba of Benin for his approval. He cited UDEH V. IDEMUDIA (1998) 8 NWLR (PT. 450) 231.

He submitted that matters of customary law must be proved by evidence. He further submitted that the Defendants did not plead nor lead evidence of custom. That they did not even plead judicial notice nor urge the Court to invoke judicial notice in proof of Benin custom relating to land acquisition as required by section 16 (1) and (2), 17 and 18 (1) and (2) of the Evidence Act 2011 (as amended).

He submitted that it is trite law that a Claimant in a declaration of title and trespass as in this case must prove the identity and boundaries of her land. That the filing and tendering before the trial Court an accurate survey plan of the land in dispute drawn to scale by a licensed Surveyor reflecting all the features on the land and showing clearly the boundaries is a necessity and cited ADESANYA V. ADERONMU (2001) 9 NWLR (PT. 672) 370 AT 386 – 387 PARAS G – A.

He urged the Court to hold that the Claimant has established the identity of the land in dispute using the C.W. 3 who testified before this Court and gave vivid description of the land in dispute.

He finally urged the Court to resolve issue one in favour of the Claimant.

On issue two, he submitted that the Claimant in her evidence testified that the 1st and 2nd Defendants trespassed in her land and destroyed her crops on it which include cashew trees, oranges, cassava etc. That the evidence of the Claimant and her witnesses show clearly that the Defendant trespassed on the Claimant's land measuring 100ft by 200ft. He urged the Court to hold that the Claimant is entitled to an order of injunction and damages and cited OLORUNGEMI V. ASHO (1991) 1 NWLR (PT. 588) 1 AT 3 RATIO 2 AND OGUN YOMBO V. OKOYA (2002) 16 NWLR (PT. 793) 224 AT 234 RATIO 7. He urged the Court to resolve issue two in favour of the Claimant and hold that the Claimant has sufficiently established the identity of the land in dispute.

He finally urged the Court to hold that the Claimant has proved her claim on the balance of probabilities or on preponderance of evidence as required by section 135 (1) and (2) of the Evidence 2011 (as amended) and therefore entitled to all the reliefs claimed in her

Statement of Claims cited MINI LODGE LTD. V. NGEI (2010) 10 WRN 58
AT 68, ELLIAS V. OMO-BARE (1982) 2 SC 25.

I note that learned Counsel for the parties formulated two issues each for determination. It is my view that the two issues formulated by learned Counsel for Claimant is all embracing and adequately captured the issues in controversy between the parties. I propose to determine the case in those two issues. Let me return to issue No. 1 formulated by learned Counsel for the Claimant.

It is pertinent to state that Under the Nigerian Land Law, it had long been established that there are five ways of proving or establishing title to land. These ways are:

- (1) Though evidence of traditional history;
- (2) Through production of document of title which are duly authenticated;
- (3) By the proving acts of ownership numerous and positive enough to warrant the inference that the person is the true owner;
- (4) Through acts of long possession and enjoyment of the land, and
- (5) By 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.

These five ways of proving title to land were approved by the Supreme Court in its decision in the case of *IDUNDUN V. OKUMAGBA* (1976) 9 – 10 SC 227.

See: (i) *ADENIRAN V. ALOA* (2001) 92 LRCN 3253

(ii) *DURU V. ONWUMELU* (2001) 92 LRCN 3148

(iii) *ECHI V. NNAMANI* (2000) 78 LRCN 1493

(iv) *BALOGUN V. AKANJI* (2005) 126 LRCN 858
OR (2005) 10 NWLR (PT. 933) 394.

(v) *OJOH V. KAMALU* (2006) 136 LRCN 1130

It is important to point out that the five ways of proving to land outlined above are quite separate and distinct in their application. In other words, each of the five ways can be relied upon exclusively by a party to support his or her claim. This of course means that each of the five ways of proving title will be sufficient proof.

It is also pertinent to state, that it is from the Claimant's Statement of Claim that the Court can ascertain the method or methods of proof that the Claimant is relying on in proof of his/her title to the land in dispute. It is demonstrably clear from paragraphs 5(a) –

(e) 3(i), (ii) and (iii) of the Amended Statement of Claim that the Claimant is claiming title to the land in dispute under Benin Customary Law by documents of title through direct grant from the Oba of Benin, Oba Akenzua II.

It is a basic principle that all land in Benin is owned by the Community, for whom the Oba of Benin holds same in trust, and it is the Oba who can transfer to an individual, ownership of such land and until so transferred, the occupier may continue to hold it for farming purpose. See the following cases:

- (i) IDEHEN V. OLAYE (1991) 5 NWLR (PT. 191) 344 AT 347, RATIO 8.
- (II) ATITI GOLD V. OSARENREN (1970) 1 ALL NLR 125.
- (III) AIGBE V. EDOKPOLOR (1971) 2 SC. 1

It is worthy of note that the requisite procedure for acquisition of title to land under the Benin Customary Law has been well spelt out by the Supreme Court in the case of ENABULELE V. AGBONLAHOR (1999) 67 LRCN 571 AT 581 RATIO 1 as follows:

“Under Bini Customary Law, title to land is acquired through a grant by the Oba of Benin through a specific procedure:

- (a) A person intending to acquire land must direct an application in writing to that effect through the Plot Allotment Committee responsible for the ward in which, the land intended to be acquired is situate.
- (b) Upon receipt of the application, the Plot Allotment Committee will delegate some of its members to carry out an inspection of the land and they will in turn report back to the Committee of their inspection, the purpose of inspection being to ascertain the land to be granted with certainty and also to ascertain if it is free from dispute or has not been previously granted to someone else.
- (c) After being satisfied that the desired piece of land in dispute is free, the Committee will endorse the application and forward it to the Oba of Benin.
- (d) The Oba of Benin will then grant his approval to the application in writing.”

See also:

- (i) ARASE V. ARASE (1981) 5 SC 33;
- (II) OKEAYA V. AGUEBOR (1970) 1 ALL NLR 1 AT 8 – 10 (REPRINT);
- (III) AWOYEGBE V. OGBEIDE (1988) 1 NWLR (PT. 73); 509.
- (IV) BELLO V. EWEKA (1981) 1 SC 101.

Now, the Claimant’s case as can be seen from her own testimony, her witnesses and pleadings is that she applied through ward 37B Evboriaria Plot Allotment Committee in the month of February, 1974 for a parcel of land measuring 100ft by 200ft which was duly approved

by the Oba of Benin, His Royal Highness Oba Akenzua II vide Exhibit 'A' & "D" on the 19/3/1974. She gave evidence of how a pointer (CW2) was delegated by the Committee to show her the demarcated land which was dispute free. She also testified that after the report of the inspection by C.W. 2, she was given an application form by C.W. 1, the Secretary of Plot Allotment Committee which she duly filled and same forwarded to the Oba of Benin for his approval, vide Exhibit 'A'. After the approval, she took immediate possession of the land and started to farm on it with the children until 2002 when the 1st Defendant trespassed on same. She commissioned CW 3 who carried out a litigation survey plan, Exhibit 'E'.

The Claimant's evidence is supported by the testimony of CW 1 and CW 2. CW1 testified that he was the Secretary of ward 37B, Evboriaria Plot Allotment Committee between 1972 – 1978. He said that when the Claimant approached the Committee in February 1974 for a parcel of land, the Committee sent CW 2, a Pointer to show the Claimant the land already mapped out and later reported back to the Committee. He gave the Claimant an Application form which she duly filled and signed, the Committee members signed their columns and

sent it to the Oba of Benin who duly approved same, vide Exhibit 'A'.

He gave Exhibit 'A' to the Claimant.

C.W. 3 the Surveyor gave vivid description of the identity of the land in dispute.

CW 2, the Pointer to the ward 37, Evboriaria Plot Allotment Committee stated that he was the ward 37B pointer between 1971 – 1976. He stated that he was directed by the Committee to show the Claimant the Community's free plots of land that had not been allotted. He said that he took the Claimant and showed her the land in dispute.

On the other hand, the 1st Defendant testified through DW 1 and DW 2 of how it acquired the Church land from one Mr. Austine Edegbe, the owner through an outright sale vide a Deed of Assignment Exhibit 'H' in 1999. That were given the Oba's approval, Exhibit 'J'. They testified to how their vendor, Mr. Austine Edegbe was introduced to them by one Mr. Ralph Ojo, and after investigation found that the land belong to Mr. Austine Edegbe before they enter into an agreement to purchase the land. They testified that after the purchase, they took immediate possession and mounted canopies and commenced

worshipping there. That they started the Church building and

Auditorium in 2000 which were completed in 2002 without challenge from anybody over the ownership of the land until 2003, when the Claimant served them Court processes. They commissioned DW 3 who prepared a litigation survey plan, Exhibit "G". He also gave accurate description of the identity of the land. Both C.W. 3 and D.W. 3 showed on their Survey Plans that the land is situate along Raph Jo Drive and has boundary with the property of the Limit Hotel. Therefore, the identity of the land is not in dispute and the parties are ad-idem on the identity of the land.

In this case, I had earlier stated the specific procedure for acquisition of land under Benin Customary Law, and I do not intend to restate same again.

Let me quickly say that I have painstakingly considered the totality of oral and documentary evidence adduced by the Claimant and her witnesses, and weighed same side by side with the oral and documentary evidence of the 1st Defendant witnesses in line with the pleadings. I have also given careful consideration to the written arguments of learned Counsel for the parties.

After a due consideration of the entire evidence, it my view that the Claimant and her witnesses meticulously led evidence in

compliance with the strict and set down procedure to be followed in acquiring a parcel of land under Benin Customary Law as adumbrated in many decisions of the Supreme Court. In other words, the Claimant and her witnesses (CW 1 and CW2) proved due compliance with the necessary steps precedent to the grant of Oba's approval under Benin Native Law and Custom. The Claimant who got a direct grant from the Oba of Benin, Oba Akenzua II, vide Exhibit "A & D" on 19/3/1974, gave detailed evidence of how she submitted her application to ward 37B Evboriaria Plot Allotment Committee, how the Pointer, CW 2 was sent to inspect and show her the land to ensure it was dispute free, how C.W. 2 reported his findings to the Plot Allotment Committee, and how C.W. 1, the Secretary of the Committee and members forwarded her Application to the Oba of Benin, Oba Akenzua II who subsequently approved same.

The evidence of the Claimant was amply corroborated by the testimony of CW 1 and CW 2 as to the particular roles they play in the process of acquisition of the land in dispute by the Claimant which evidence was not discredited or challenged in any way by the Defendant.

Contrariwise, the 1st Defendant apart from tendering the Deed of

assignment Exhibit 'H' and her Oba's approval failed to call any member(s) of ward 37B Evboriaria plot Allotment who granted the land to Mr. Austin Edegbe its vendor. It therefore failed woefully to lead any iota of evidence of the procedure its predecessor-in-title or vendor followed in acquiring the land under Benin Customary Law.

Amazingly, the 1st Defendant failed also to call Mr. Austin Edegbe, the vendor sued as the 2nd Defendant to testify in support of its case. No reason(s) was/were adduced for the failure of the 1st Defendant to call its said vendor, Mr. Austine Edegbe. The 1st Defendant also failed to call the Bush Inspector or Pointer(s) who inspected and showed the land to Mr. Austine Edegbe nor the members of the Committee or Secretary who forwarded the Application to Oba of Benin for approval to ascertain that its Oba approval relate to the land in dispute.

Interestingly, the seemingly devastating evidence of CW 1, the Secretary and CW 2, the Pointer of ward 37B Plot Allotment Committee, that their Community never allotted any land to the Defendants; and that the 1st Defendant's Oba Approval Exhibit 'J' bearing the logo of "Eben and Ada" did not emanate from their ward 37B Committee completely knocked out the bottom of the case, the 1st Defendant laboured to built that her approval relate to the land in

dispute. The CW 1 and CW 2 not only disowned the 1st Defendant's Oba approval, Exhibit 'J' but also discredited it as being genuine. This damaging evidence was never challenged nor contradicted by the 1st Defendant by calling evidence of members of the ward 37B Plot Allotment Committee who signed and forward its predecessor-in- title Application Form to the Oba of Benin, Oba Akenzua II for approval. I therefore hold that the 1st Defendant's Oba's Approval Exhibit 'B' does not relate to the land in dispute in view of the credible evidence of CW 1 and CW 2 which I believe and accord the greatest credence.

In the case of FINIH V. IMADE (1992) 7 LRCN 117 RATIO 5, the Supreme Court succinctly held as follows:

“For a valid grant of land under Benin Customary Law, due proof of all compliance with the preliminary steps leading to the Oba's Approval as well as the Approval itself are important. Mere production of deed of conveyance and the issuance of certificate of occupancy without due proof of prior title of the person from whom the title is derived cannot confer title on the holder.”

See: BELLO V. EWEKA (1981) 1 SC 101.

It is settled law, supported by a legion of decided cases that where there are competing claims in respect of a parcel of land, the

party with a better title will succeed. This is because in law, there is no such thing like concurrent possession of land by two persons claiming adversely to one another.

See: UDEH V. IDEMUDIA (SUPRA);

ODI V. OSAFILE (1987) 2 NWLR 510;

BALOGUN V. LABIRA (1988) 3 NWLR (PT. 80) 66.

Aside from this, the claim of the Claimant earlier set out shows that apart from the declaration to title, he also claims damages for trespass and injunction. She gave evidence of how the 1st Defendant trespassed on the land and erected a structure thereon. The 1st Defendant admitted erecting a structure on the land in dispute.

The law is that the slightest interference with the land in peaceable possession of an other amounts to trespass for which the Claimant is entitled to an award of damages.

See: ECHARE V. EZIRIKE (2006) 12 NWLR 9PT. 994) 386.

I hold that the claimant has established that the 1st Defendant unlawful trespassed on her land without her consent.

After weighing the entire evidence of the parties, it is my assessment that the Claimant has proved a better title to the land in dispute, in view of all I had earlier said. In other words, the Claimant presented a more credible, plausible and convincing case, and I prefer her case to that of the 1st Defendant.

Consequently, I find and hold that the Claimant has successfully proved her case on the preponderance of evidence as required by law.

Accordingly, I hereby enter judgment in favour of the Claimant against the Defendants on the following:

- (1) A declaration that the Claimant is the person entitled to be granted a Statutory Right of occupancy over that piece or parcel of land measuring approximately 100ft by 200ft or 26.32m x 60.80 x 27.60m x 61.41m lying and situate along Ralph Jo Drive at ward 37B Evboriaria, Benin Sapele Road, Benin City.
- (2) I award the sum of N300,000 being general damages for trespass on the Claimants Land by the 1st Defendant's act of erecting a Church building on the said parcel of land.
- (3) An order of perpetual injunction restraining the Defendants, their servants, agents, privies and/or any other person claiming through them or on their behalf from trespassing on that my said piece or parcel of land measuring approximately 100ft x 200ft 26.32m x 60.80m x 27.60m x 61.41m lying and situate along Raph Jo Drive at ward 37B, Evboriaria, Benin Sapele Road, Benin City.

