

**IN THE HIGH COURT OF JUSTICE,
EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION**

**HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE N.A. IMOUKHUEDE –JUDGE**

ON WEDNESDAY THE 1ST DAY OF JUNE, 2016

BETWEEN:

SUIT NO: B/438/14

MR. EDWARD AIKHUEGBE

CLAIMANT

AND

**MR. BRIGHT AGHO
OSATOHANWEN AGHO**

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DEFENDANTS

J U D G M E N T

The Claimant claims against the Defendants jointly and severally as follows:

- a. A declaration that the Claimant is the owner and in possession of that parcel of land measuring 50ft by 100ft and the entire building therein lying and situate at Ogbeson quarters covered by deed of transfer dated 21st of January 2001.
- b. A declaration that the further entering and intimidation by the Defendants against the Claimant in the aforesaid premises is unlawful and illegal.
- c. The sum of N1,000,000.00 damages against the Defendants for illegal transfer on the aforementioned land and arrest and detention of the Claimant by the Defendants.
- d. An order of perpetual injunction restraining the defendants, their agents, servants, privies and workmen from further entering into the aforesaid land.

The Defendants were served by substituted service on the 28th of November 2014 and they did not file any Statement of Defence in spite of hearing notices issued on them on the 25th of September 2015 and on the 22nd of February 2016. On the 17th November 2015, Claimant gave evidence in support of his Claim. Claimant testified that the Defendants are his step children from his late wife, Mrs Patience Aikhuegbe, who died on the 6th of March 2014. Claimant testified that he met Mrs. Patience Aikhuegbe many years ago as a free woman and he fell in love with her. Claimant testified that Patience told him that she had five children already who are the Defendants, but that she was never married to their father, Mr. Agho. Claimant testified that he informed her that he will marry her despite her having children because he was in love with her. Claimant testified that Patience took him to see her parents at Igueozevballo along Auchi Road, to introduce him to them as the man she wants to marry. Claimant testified that when he met Patience's parents they were happy with the arrangement and that he promised them that he will take care of her and the children she already had, who are the Defendants in this case. Claimant testified that he later married Patience under the customary law in 1986. Claimant testified that after marrying

Patience, she packed into his house where they lived together as husband and wife and she had five children for him they are: Ovbagiagiemen, Agbizenoria, Ighayere, Joseph and Esther.

Claimant testified that two of the children are now dead namely: Ovbagiagiemen and Joseph. Claimant testified that that the Defendants were young people when he married their mother and that he took care them as his own children. Claimant testified that on or about the year 2002, he saw a parcel of land measuring 50feet by 100feet for sale at Ogbeson Quarters and that he informed his wife that he was interested. Claimant testified that he later bought the land using the name of one of his daughters, Ovbagiagiemen Aikhuegbe to buy the land and a receipt for the purchase was given to him, which was admitted and marked Exhibit A. Claimant testified that he later built a bungalow of eight rooms on the land, comprising of two bedrooms flats in four places. Claimant testified that one of the apartments is a store and one room. Claimant testified that when he bought the house, it had an uncompleted boy's quarter which he later completed to the stage it is as at today. Claimant testified that after erecting the house he put tenants in the house that were paying him rent. Claimant testified that when the 2nd Defendant's husband died, she came to her mother looking for a place to stay and that his wife informed him and he had to give her the store and a room in the house to stay rent free as his step daughter, where she still occupies till date. Claimant testified that since he built the house nobody has ever challenged his title to the property.

Claimant testified that he later acquired the adjoining land in the name of his youngest daughter which he is presently erecting a building on. Claimant testified that his wife was sick for many years and died on the 6th of March 2014 and he buried her. Claimant testified that sadly enough, his daughter, Ovbagiagiemen whom he used her name to buy the land died again on the 3rd of April, 2014. Claimant testified that he was in a state of sadness and mourning of the loss of his wife and 1st daughter throughout the period of April to June 2014. Claimant testified that his tenants in the house in dispute took advantage of his calamity and refused to pay their house rent and he issued them quit notices through his solicitors. Claimant testified that they replied him with a letter and thereafter he issued them solicitor's letter of his intention to recover possession.

The aforementioned documents were admitted and marked Exhibits B, C and D respectively. Claimant testified that he was surprised to see a letter from his tenant's solicitors that the house in dispute belongs to his late wife, Patience Aikhuegbe. Claimant testified that on or about 3rd of July 2014, the Defendants came from Oregbeni Police Station with police to arrest him for an offence of illegal collection of rent and threat to their lives, which they claimed belongs to their mother, Patience Aikhuegbe now dead. Claimant testified that he was detained and made statement to the police, denying their claim and was later released by the police when they heard him that he was the owner of the property in dispute. Claimant testified that he later wrote a petition to transfer the matter to the Area Commander of Police, Sapele Road, Benin City.

Claimant testified that after due investigation by the police, it was discovered that the land and the house belongs to him and the Defendants were advised to apologize, but they refused.

Claimant testified that up till now the Defendants' are still collecting rents from the house illegally. Claimant testified that when he married the Defendants' mother, they were still in primary school and he assisted his wife to take care of the children up till the time they got to maturity and the Defendants have now forgotten all that he did for them, because of greed for property.

Claimant testified that he suffered humiliation, embarrassment and ridicule by the unholy, illegal and sacrilegious action of the Defendants.

Claimant testified that he has suffered losses and damages due to the actions of the Defendants.

Claimant testified that the Defendants have no right to collect rent from his aforementioned property.

CW1 testified and stated that he sold his land measuring 50ft by 100ft lying and situate at Ogbeson ward 40A Benin City to the Claimant in 2002 and the Claimant used the name of his daughter to buy the land.

CW1 testified that an agreement receipt was written for the transaction and identified Exhibit A.

Cw1 testified that when he sold the land it had an uncompleted boy's quarters on it.

CW1 testified that he knows that the Claimant has since erected a building on the land.

CW1 testified that he did not sell the land to the Claimant's wife.

Counsel to the Claimant, Mrs C.G. EKEJIUBA filed a written address and formulated the following issues for determination:

1. Whether the Claimant has established his case on the preponderance of evidence to entitle him to the grant of the claims before this Honourable Court.
2. Whether the action of the Defendants who collects rent from the tenants in the property in dispute, without the consent and authority of the Claimant and without remitting the rent to the Claimant does not amount to trespass that will, entitle the Claimant to the damages sought?
3. Whether the Claimant is entitled to an order of injunction against the Defendants.

As I earlier stated, the Defendants did not defend this suit in spite of numerous hearing notices enumerated above that were served on them. The Court is then left with the uncontradicted and uncontested evidence of the Claimant and his witness. I observed the Claimant and his witness in the witness box and I find them to be witnesses of truth. I have carefully read the evidence led by the Claimant and the written address of his Counsel. In *Durosaro Vs. Ayorinde* (2005) 126 LRCN 1015 the Supreme Court held

that: "It is elementary that where a Defendant fails to give evidence at the trial, his Statement of Defence is deemed abandoned. This is because pleadings by their nature and character cannot speak. They speak through witnesses and as long as a party refuses or fails to call witnesses to articulate their content, they remain dormant process in the court's file. As a matter of law they are moribund and no court of law is competent to resuscitate".

Also in Order 20(6) and (9) High Court of Edo state (Civil Procedure) Rules 2012.

(6) "In an action for the recovery of land, if the Defendant makes default as mentioned in rule 1, the Claimant may apply for a Judgment that the person whose title is asserted in the Writ of Summons shall recover possession of the land with costs.

In all actions other than those in the preceding rules of this Order, if the Defendant makes default in filing a defence, the Claimant may apply to a Judge for Judgment and such Judgment shall be given upon the Statement of Claim as the Judge shall consider the Claimant to be entitled to" In the case of *Inakojo Vs. Adeleke & Ors.* 2007 143 LRCN 1, the Supreme Court held that:

“If a Plaintiff files his Statement of Claim or as in the instant case, the Plaintiffs filed their affidavit in support of the originating summons and the Defendant or Defendants refused, failed or neglected to file a Statement of Defence or here a counter-affidavit he or they, will be deemed to have admitted either the Statement of Claim or the affidavit in support thus leaving the court seized with the matter, with the authority to pre-emptorily enter Judgment for the Plaintiff or Plaintiffs without either hearing evidence or without the counter-affidavit in a case initiated by an originating summons. See the case of Oke & 3 Ors. Vs. Aiyedan (1986) 2 NWLR (Pt. 23) 548. The effect of where a party or parties like the Appellant failed to make use of the opportunity to be heard, he or they, cannot be heard to complain of denial of fair hearing. See also the case of Ndubuka Vs. Kolomo (2005) 4 NWLR (Pt. 915) 411 and Zaboley International Ltd Vs. Omogbehin (2005) 17 NWLR (Pt. 953) 200 at 233-224 C.A”

From the above cited authorities, I am fully persuaded that this Court may give judgment to the Claimant due to the failure or neglect of the Defendants to defend their case. I now proceed to the Claimants' Claim and grant the following orders:

1. A declaration that the Claimant is the owner and in possession of that parcel of land measuring 50ft by 100ft and the entire building therein lying and situate at Ogbeson quarters covered by deed of transfer dated 21st of January 2001.
2. A declaration that the further entering and intimidation by the Defendants against the Claimant in the aforesaid premises is unlawful and illegal.
3. The sum of N1,000,000.00 damages against the Defendants for illegal transfer of the aforementioned land and arrest and detention of the Claimant by the Defendants.
4. An order of perpetual injunction restraining the Defendants, their agents, servants, privies and workmen from further entering into the aforesaid land.

HON. JUSTICE N. A. IMOUKHUEDE,
J U D G E.
1/6/2016