

IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY

**BEFORE HIS LORDSHIP, HONOURABLE JUSTICE C. O. IDAHOSA –
CHIEF JUDGE**

ON THURSDAY THE 24th DAY OF MARCH, 2016

BETWEEN:

SUIT NO. B/458/2007

1. DORA OBASUYI (NEE OKUNGBOWA)

2. JIM IGBINOSA OKUNGBOWA

*(For themselves and as representative of the
Family of Johnson I. Okungbowa suing by
their Attorney AUSTIN IHASEE AGHABUEZE*

CLAIMANT

AND

1. PASTOR OSAHON SOLOMON

2. BERNARD OKHUAROBO OSAHON

DEFENDANTS

JUDGMENT

This action was initiated by the Plaintiffs now known as Claimants, when they filed a writ of summons on 10/10/2007. They filed a statement of claim on 25/10/2007. In the statement of Claim they claimed as follows:

(A) A Declaration that the Plaintiff is the owner and therefore entitled to all that piece parcel of land measuring

approximately 50feet by 200feet lying, situate and known as No. 4, Igbinadolor Street, Ekosodin, Benin City.

- (B) An Order of perpetual injunction restraining the Defendants, their agents, privies, successors in title from further acts of trespass on the plaintiffs land.
- (C) The sum of One Million Naira being General Damages for trespass."

These two processes were served on the 1st Defendant on 10/04/2008 while the 2nd Defendant was served on 21/04/2008.

The Defendants reacted through their Counsel, Chief O. T. Nwoha, when he filed an application for an extension of time within which to enter an appearance on 26/05/2008. This application to enter an appearance out of time was granted on 24/06/2008. Apparently the Defendants were frustrating the efforts of the Claimants to carry out a survey of the land in dispute. Thus the Claimants filed a motion on notice seeking an order compelling the Defendants to allow them carry out the survey. This application was granted on 24/6/2008.

As usual with learned Counsel, on the 20/11/2008, the learned Counsel for Claimants applied for leave to amend. This was promptly granted on 24/11/2008.

By this amendment the claim now read as follows:-

- a. A Declaration that the Plaintiffs are the owners and therefore entitled to all that piece or parcel of land covering an area of

1462.582sq. meters verged red and more particularly described in Survey Plan No. ISO/ED/039/2009 dated 13/11/2008 prepared by F. U. Iyawe, Licensed Surveyor.

- b. An order of perpetual injunction restraining the Defendants, their agents, privies, successors in title from further acts or trespass in the Plaintiffs land.
- c. The sum of One million naira (1,000,000.00) being general damages for trespass.”

A litigation survey plan was now attached to the Amended Statement of Claim.

The Defendants, filed an application for leave to file their Statement of defence and counter claim out of time. This was granted on 31/3/2009. In the Counter claim the Defendants claimed as Follows:

- a. A declaration that the house situated on the land in dispute measuring approximately 100feet x 200feet located at Ekosodin Village also known as 4, Igbinador Street, Ekosodin, Edo State and more particularly described in litigation survey plan No. KS/ED/L/08/2008 is an Igiogbe inherited by the 1st defendant in accordance with Benin Custom.
- b. A declaration that the 1st Defendant is the person entitled to a certificate of occupancy over all that piece of land measuring approximately 100feet x 200feet located at Ekosodin Village also known as 45, Igbinador Street, Ekosodin, Edo State and more particularly described in litigation survey plan | No. KS/ED/L/08/07 dated 28/10/2008.
- c. A perpetual injunction restraining the Plaintiffs, their agents, servants and privies from trespassing into the piece of land in dispute measuring approximately 100feet x 200feet located at Ekosodin Village also known as 4, Igbinador Street, Ekosodin,

Edo State and more particularly described in litigation survey plan No. KS/ED/L/08/08 dated 28/10/2008.”

On 19/11/2011, the Claimants filed a motion on notice for leave to amend the already amended Statement of claim. This motion which was initially fixed for 12/7/2011 was not taken. In the circumstances, it is hereby struck out.

This means that the statement of claim remains the Amended Statement of Claim. Besides the Claimants did not file a statement of Defence to the Counter Claim. After a lot of delay the Claimants opened their case, on 19/5/10. Between 19/5/10 and 8/05/14 the Claimants were only able to take one witness.

After so many adjournments the case of the Claimants was eventually struck out on 8/05/14 and the Defendants counter Claimants given the go ahead to prove their own case.

1st Defendant opened the case for the Defendants on 13/1/16. The 1st Defendant was not cross examined. The Defendants counter claimants then closed their case and later filed a written address.

The written address was served on the Claimant – see page 105 of case file for affidavit of service of the address. The 1st Defendant testified and adopted his deposition on 13/1/16. He identified a certified true copy of a litigation survey plan and it was admitted and marked as Exhibit C. He was not cross examined at

the end of his testimony. Learned Counsel for Defendants Counter Claimants then closed the case for the Defendants counter claimants, and later filed an address.

The address was served on the Claimants' Counsel. See page 105 of the case file for the affidavit of service.

“Whether the Defendants/Counter Claimants have sufficient and credible evidence in proof of their counter claim.”

He submitted that there are five ways of proving title to land. He relied on the case of IDUNDUN & ORS V. OKUMAGBA & ORS 1976 NSCC 445, PP 453 – 454. He proceeded to enumerate the five ways, and submitted that although a claimant only needs to prove one of the five ways in order to succeed, the counter claimants in this case have proved their ownership through three of the stipulated ways. Thus he submitted that the counter claimants proved their title by traditional evidence, by acts of long possession and enjoyment of land and through Exhibit A, the litigation survey plan.

All this evidence, given through the deposition of their one witness was not challenged. Thus learned Counsel submitted that where evidence is not challenged (as by cross examination) or controverted (as by contrary evidence), the court is bound to accept the testimony of the counter claimant. He referred

to OKPOKO COMMUNITY BANK VS. IGWE (2013) 15 NWLR 1376, 167 INEGBEDION
V. SELO – OJEMEN 2013 216 LRCN 53.

He submitted that a trial court is enjoined to accept and act on such unchallenged and uncontroverted evidence. He also pointed out that in such instances, only minimal proof will be required to discharged the onus of proof.

I have read and considered the deposition of the 1st Defendant. It is detailed, and gives the oral history of how Ekosodin came to be. It would have been quite interesting, if the Claimants had not chickened out. The cross examination of 1st Defendant/Counter Claimant would have been interesting.

However, in the circumstances the testimony of 1st Defendant Counter claimant was not challenged nor controverted and I have no reason to disbelieve it. Accordingly I accept it in its entirety.

I am therefore satisfied that the Defendants/Counter claimants have proved their claims against the Claimants and are therefore entitled to judgment.

Accordingly judgment is entered in favour of the Defendants/Counter Claimants as follows:-

1. It is hereby declared that the house situated on the land in dispute measuring approximately 100 feet by 200 feet located at Ekosodin village also known as No. 4 Igbinador Street, Ekosodin, Edo State, and more particularly described in litigation survey Plan No. KS/ED./K/08/0-8 dated 20/10/2008 I.e. Exhibit A in this proceedings is an Igiogbe inherited by the 1st Defendant in accordance with Benin custom.
2. It is hereby declared that the 1st Defendant is the person entitled to a certificate of Occupancy over that entire piece or parcel of land measuring 100 feet by 200feet located at Ekosodin village also known as No. 4 Igbinador Street, Ekosodin, Edo State and more particularly described in litigation survey Plan No. KS/ED./K/08/0-8 dated 20/10/2008. Dated 28/10/2008.
3. The Claimants are hereby restrained by themselves their agents, servants, and privies from trespassing into the piece or parcel of land measuring 100 feet by 200 feet located in Ekosodin Village also known as No. 4, Igbinador Street, Ekosodin, Edo State and more particularly described in litigation survey Plan No. KS/ED./K/08/0-8 dated 20/10/2008.

The Defendants/Counter Claimants are entitled to costs which I fix at N10,000.00 against the Claimants.

Hon. Justice C. O. Idahosa
Chief Judge
24/03/2016

COUNSEL:-

Chris Aghoja Esq. Counsel for Claimants

Chief O. T. Nwoha. Counsel for Defendants/Counter Claimants.