

**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. A. EDIGIN -**  
**JUDGE ON FRIDAY THE 24<sup>TH</sup> DAY OF JUNE, 2016**

**BETWEEN:**

**SUIT NO. B/462/2005**

- |                                                               |   |                           |
|---------------------------------------------------------------|---|---------------------------|
| 1. Mrs. Edith Igbavboa<br>2. Mrs. Eunice Baror (Nee Igbavboa) | } | ... Claimants/Respondents |
| And                                                           |   |                           |
| 1. Mrs. Eunice Okundia<br>2. Mrs. Otamere Osaroguiuwa Ehioba  | } | ... Defendants/Applicants |

**J U D G M E N T**

By their further Amended Joint statement of claim, the claimants jointly claim against the defendants as follows.

1. A declaration that the parcel of land situate and lying in the New Layout of Ugbekun village, Ward 33/E, Ugbekun Quarters, Benin City, measuring 50 feet by 100 feet demarcated with BEACON BLOCKS NUMBERS B.T.P.O.U.E. 35, 36, A.D. 102 and 103 and covered with LICENSED SURVEY BEACON BLOCK NUMBERS BF.8447, BF.8448, BF.8449 and BF. 8450 together with the structure thereon and more particularly delineated in the litigation survey plan NO. ISO/ED/D27/2008 constitutes the legitimate inheritance of the 1<sup>st</sup> Plaintiffs late husband and father of 2<sup>nd</sup> Plaintiff Mr. Samson Ohimai Igbavboa having validly purchased same from the 1<sup>st</sup> Defendant.
  
2. A declaration that the parcel of the land situate and lying in the New Layout of Ugbekun Village Ward 33/E, Ugbekun Quarters, Benin City measuring 50feet by 100feet and an extra parcel of land overlooking a moat in abuttal and dimensions, demarcated with licensed survey Beacon Block Numbers BF. 8449, BF. 8448, BF.8687 and BF.8688 and more particularly delineated in the litigation survey plan No. ISO/ED/D272008 dated 2/10/08 constitute the legitimate inheritance of

the 1<sup>st</sup> Plaintiff's late husband and father of the 2<sup>nd</sup> Plaintiff's late Samson Ohimai Igbavboa having validly purchased same from the 1<sup>st</sup> Defendant.

3. A declaration that the certificate of transfer dated 20/6/77 and 30/8/77 evidencing the transfer of the said land by the Defendant to late Mr. Samson Ohimai Igbavboa is valid and still subsisting and Defendant's act of putting trips of sand on the said land amounts to trespass for which the Defendant is liable in damages.
4. The sum of N500,000,000.00 (Five hundred Million Naira) being damages for trespass against the Defendants.
5. Perpetual injunction restraining the Defendants by herself, her servants, agent and privies from further trespassing, interfering or dealing with each of the said parcel of land and building thereon as same is inconsistent with the rights of the plaintiffs.

In proof of their claims, 1<sup>st</sup> claimant testified for herself and called two witnesses. Nine Exhibits were tendered to wit: Exhibit P, P1, P2, P3, P4, P5, P6, and P7A.

On the other hand, the defendants filed a Joint Amended Statement of Defence and counter claim against the claimants as follows:

1. A declaration that before the Land Use Act and under the Benin Native Law and custom, the Claimants and their predecessor in title late Pa. Okundia Izekor has been the exclusive owner in possession, occupier and the user of the piece of land measuring 200feet (width) by 100 feet (length) the vested rights and title of the plaintiffs and/or

their predecessor in title over the said land are still in force by reason of the Land Use Act and that they are therefore entitled to the issue or granted Certificate of Occupancy thereof.

2. A declaration that the 1<sup>st</sup> Claimant is the owner and in possession and entitled under Benin customary law to the piece or parcel of land measuring 100feet by 100feet which land is lying and situate at New Layout, Ugbekun Ward 33E, Benin City and therefore entitled to be issued or granted certificate of occupancy thereof and which said land is verged blue and forms part of the composite plan No.JAO/ED2013/OIC and measures 1357.466 Square metres made on the 5<sup>th</sup> day of April, 2013.
3. A declaration that by the virtue of the Deed of Gift made on the 22<sup>nd</sup> day of February 1983, the 2<sup>nd</sup> Claimant is the owner and in possession of the said piece or parcel of land measuring 100feet by 100feet and which land is lying and situate at New Layout Ugbekun Ward 33E, Benin City and verged blue and forms part of the composite plan No. JAO/ED2013/ OIC and measures 1357.466 Square metres made on the 5<sup>th</sup> day of April, 2013 and therefore entitled to be issued or granted certificate of occupancy.
4. General damage for trespass over the land in dispute is the sum of ~~₦~~550,000,000.00 (five hundred and fifty million naira only).
5. An order of perpetual injunction restraining the Defendants their agents, servants and privies from entering or further trespassing on the land in dispute and/ or doing anything inconsistent with the vested right of interest of the plaintiffs thereon.

In defence and in proof of their counter claim, the 2<sup>nd</sup> defendant testified for himself and called one witness.

Three exhibits were tendered to wit: Exhibit D, D1 and D2

In response, the claimants filed a Further Amended Joint Defence to counter claim dated 3<sup>rd</sup> October, 2007.

At the close of parties' case, claimant's counsel filed his final written address, adopts and rely on same as his argument in this case. The Defendant counsel did not file any final address.

**COURT:**

Briefly the facts of this case are that the 1<sup>st</sup> Claimants husband who is now late allegedly bought two different parcels of land from the 1<sup>st</sup> Defendant on the 20<sup>th</sup> June 1977 and 30<sup>th</sup> August 1977 in the presence of the 1<sup>st</sup> Claimant. Both portions of land are situate at Ward 33E, New layout Ugbekun Village, Ugbekun quarters Benin City. The two portions are side by side. Separate Documents of transfer were executed by the 1<sup>st</sup> Claimants late husband and the 1<sup>st</sup> Defendant for the two portions of land. The first portion of land bought on the 20<sup>th</sup> June 1977 measures 50ft by 100ft the second portion of land bought on the 30<sup>th</sup>

August 1977 also measures 50ft by 100ft but has an extra piece of land attached to it overlooking the moat. The small extra piece of land was alleged to have also been bought by the 1<sup>st</sup> Claimants' late husband. A photo copy of the Oba's approval was given to the 1<sup>st</sup> Claimants late husband. 1<sup>st</sup> Claimant and her late husband took possession of the two portions of land and extra land and farmed on them for some time and they started a building up to lintel level before the 1<sup>st</sup> Claimants husband died. Two certificates of occupancy cover the portions of land and extra portion.

On the 25<sup>th</sup> of March 2005, and after the death of her husband, the 1<sup>st</sup> Claimant said she went to their land and met a heap of sand on it. Her lawyer advised that she put a sign post on the land with the inscription "This land is not for sale" which she did but that it was removed. 1<sup>st</sup> Claimant then confronted the 1<sup>st</sup> Defendant who admitted putting the sand on the land and is also claiming ownership of the land. The 2<sup>nd</sup> defendant who is the son of the 1<sup>st</sup> Defendant alleges that his mother inherited a plot of land measuring 200ft by 100ft from her father out of which she gave 100ft by 100ft to him as a gift. He said the 100ft by 100ft is situate at Ward 33E new layout Ugbekun village and is part of the land the claimants are claiming. It is the alleged entry of the 1<sup>st</sup> Defendant on the land

after she had sold to the 1<sup>st</sup> Claimants late husband that has brought about this case.

The 1<sup>st</sup> Claimant testified and called 2 witnesses. She tendered a total of 9 (nine) Exhibits namely Exhibits P, P1, P2, P3, P4, P5, P6, P7 and P7A.

The Defendants filed a statement of defence and counter claim.

The 2<sup>nd</sup> defendant, tendered 3 (three) Exhibits, namely Exhibit D, D1 and D2. In his defence and proof of counterclaim, testified and called one witness.

I have read the pleadings of the parties, the oral and documentary evidence adduced by them and the final arguments of counsel for the claimant as contained in his final written address. Learned Counsel for the defendants refused to proceed with the defence and did not file any final written address in spite of several adjournments for them to do so because the appeal he lodged at the Court of Appeal against an interlocutory Ruling of this Court on an application for amendment filed by the defendants was refused by the Court of Appeal. This Court therefore closed the Defendants case.

However, learned counsel for the claimant in her final written address formulated one issue for determination and that is:-

“Whether having regard to the totality of the evidence before the Court, the Claimants are not entitled to judgment and the counter claim be dismissed”.

In my view, the issue that arises for determination is:-

“Whether having regard to the totality of evidence before the court, the Claimants have proved their case on the balance of probabilities to entitle them to judgment and have the counter claim dismissed.”

This case relates to title to land and it is settled law that there are five ways of establishing ownership of title to land

In the case **of Idundun v Okumagba (1976) 9 – 10 S.C. 227** the Supreme Court held thus:-

1. Ownership of land may be traditional evidence.
2. Ownership of land may be proved by production of documents of title which must of course be duly authenticated in the sense that their execution must be proved.
3. Acts of ownership extending over a sufficient length of time and are numerous and positive enough to warrant the inference that the person is the true owner.
4. Acts of long possession and enjoyment of land which may be prima facie evidence of ownership of the particular piece or parcel of land or quantity of land.
5. Proof of possessions 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.

In a claim for declaration of title to land, the onus is on the Plaintiff to prove his case and he must rely on the strength of his own case and not on the weakness of the defence except where the defendant's case supports the Plaintiff's case. See the case of **Nsirim v Nsirim (2002) 3 NWLR (Pt 755) at 697.**

To succeed in an action for declaration of title to land, the Claimant does not need to prove the 5 ways of establishing title to land outlined above. All the 5 ways are independent of each other. It is therefore sufficient for a Claimant to prove one of the above 5 methods of establishing title to land. See **Aighobani v Aifuwa (2006) 6 NWLR (Pt 996) pg 270 at 286 paras B – G,** where the Supreme Court per Onnoghen J.S.C. said as follows:-

“The law recognizes five distinct ways in which title to or ownership of land in Nigeria could be proved as stated by the Supreme Court in the case of **Idundun Vs’ Okumagba 1976) 9 – 10 SC 227.**

In an action for declaration of title to land, as in the instant case, a plaintiff need not prove all the five ways where the Plaintiff's case is based on traditional evidence of ownership as the legal basis of his claim, his duty is limited to proving such traditional title and no more. On the other hand, if a Plaintiff's claim relies on conveyance as the legal basis of ownership, his duty is simply to produce the documents of title or the title deeds. The same thing applies where he claims through any of the other remaining three ways.”

It is from the pleadings of the Claimant that one can know which of the 5 ways of proving title to land that the Claimant is relying on. In the extant case, the Claimants are relying on production of documents of title and acts of long physical possession and enjoyment of the land through farming.

I will deal first with the title documents. In this regard the 1<sup>st</sup> claimant testified that when her husband bought the two different portions of land from the 1<sup>st</sup> Defendant, the 1<sup>st</sup> Defendant gave him a photocopy of the Oba's approval which was in the name of her father Okundia Izekor (i.e. 1<sup>st</sup> Defendant's father) from whom she inherited the land. The Oba's approval was for 600ft by 600ft. She said her husband was not given the Original copy of the Oba's approval because he did not buy the entire land of 600ft by 600ft. The Oba's approval and the receipt of purchase are Exhibits P and P1 respectively. There is also an affidavit sworn to by the 1<sup>st</sup> Claimant's husband in respect of the extra piece of land attached to the second portion of land the 1<sup>st</sup> Defendant sold to him. The affidavit is Exhibit P3 and was deposed to on the 3<sup>rd</sup> March, 1984, a very long time before this suit was instituted in 2005. 1<sup>st</sup> Claimant also tendered two certificates of occupancy Nos 4027 and 5359 which her husband obtained from the State's Ministry of Lands over the two portions of land. They are Exhibits P4 and P5. Exhibit P4 was obtained in 1984 for the first portion of land and Exhibit

P5 was obtained in 1985 for the second portion of land and the extra piece of land by the moat.

Under cross examination, none of the documents of title tendered by the 1<sup>st</sup> Claimant was impugned in any way and the evidence of the 1<sup>st</sup> Claimant regarding the documents remained intact.

On the issue of acts of long physical possession, the 1<sup>st</sup> Claimant in her evidence stated that her late husband surveyed the land in dispute in 1981 as shown in the survey plan attached to the certificate of occupancy and started a building on the first portion of land measuring 50ft by 100ft and was planning to erect a storey building as shown in the building plan (Exhibit P2) but could not complete it before he died but the structure had reached lintel level before he died. In the case of **Dimkpa v. Chioma (2010) 9 NWLR (Pt 1200) 482 @ 509, Kekere –Ekun J.C.A.** as she then was stated thus:-

“By the provision of section 46 of the Evidence Act, 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 land 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.”

1<sup>st</sup> Claimant in her testimony said that her late husband had a heap of granite on the land which he wanted to use for decking but after his death, people started to take from it but that the remnant were still there. It is also the 1<sup>st</sup> Claimant's evidence that herself and her husband were farming on the land and planting plantains. She said further that her husband also put one of his relations by name Mr. Esebamen on the land to be farming. Mr. Christopher Esebamen testified as PW1. He said 1<sup>st</sup> Claimant's late husband asked him to farm on his land by the moat and he farmed on the land between 1982 - 1987.

Under cross examination the evidence of 1<sup>st</sup> Claimant of her husband's acts of physical possession were not in any way contradicted and PW1's evidence corroborates the evidence of 1<sup>st</sup> Claimant that her husband was in possession of the land in dispute. Furthermore the Supreme Court in the case of **Ladepo V Ajani (1997) 52 LRCN pg. 1919 at 1934** has held that cultivation of a piece of land erection of a building or fence thereon, demarcation of land with pegs or beacons are all evidence of possession. It is the evidence of the 2<sup>nd</sup> defendant under cross examination that 1<sup>st</sup> defendant, (his mother) and his grandfather were alive when the 1<sup>st</sup> Claimant's husband was erecting a building on the land in dispute and they did not challenge him. So if the 1<sup>st</sup> Defendant's father in whose name the Oba's approval is written and the 1<sup>st</sup> Defendant who inherited the land she sold to the

1<sup>st</sup> Claimants husband were alive and knew that 1<sup>st</sup> Claimants husband was building on the land in dispute, it means that the 1<sup>st</sup> Claimant's husband was properly on the land and that the 1<sup>st</sup> Claimants story that her husband bought the land is true.

On the identity of the land in dispute, the 1<sup>st</sup> Claimant has been able to identify the land with certainty by mentioning the location of the land, and her boundary neighbours. Under cross examination, she maintained as in her evidence in chief that behind the land in dispute is Mr. Adegbasa's land, on the right is Mr. Osadolor and on the left is an empty land facing the moat. The Amended Litigation survey plan Exhibit P7A shows sufficiently the features described therein. Exhibit P7A shows the uncompleted building of the 1<sup>st</sup> Claimants husband, the plantain trees planted by the 1<sup>st</sup> Claimant, the granite stones of the Claimants, the heap of sand of the Defendant (which is the cause of action). The boundary men as described by the 1<sup>st</sup> Claimant are shown. Exhibit P7A again was not challenged or contradicted in any way by the defendants and they did not object to its admissibility. In the case of **Odibendi v Okohi (2010) 13 NWLR (Pt 1210) pg 45 at 60** the Court of appeal held thus:-

“The purpose of tendering a Survey Plan of a parcel of land in dispute in evidence, is to fix the boundaries,

extent dimensions, features and location of the disputed land with accuracy and certainty. So once a Plaintiff in a land matters tenders a plan of the land in dispute without objection from the opposite party, he is not required to prove the features, the location and extent of the disputed land because by not so objecting, the opposite party has conceded the plan and its contents as representing the land in dispute.”

It is also the law that in a land case where a Defendant did not file his own counter plan, he is deemed to have accepted the boundaries and features of the land in dispute as presented by the Plaintiff. See **Chukuwedo Egwu v Billo J. Egwu & ANOR (1995) 5 NWLR (pt 396) pg 493 at 509.**

Exhibit P7A being the Amended Litigation survey plan therefore supercedes Exhibit P7. Since the Defendants did not file a counter litigation survey plan and did not object to the admissibility of Exhibit P7A, they are deemed to have conceded to it. So I believe and uphold that the Defendants have conceded to Exhibit P7A. Exhibit P7A also confirms the evidence of 1<sup>st</sup> Claimant as to all that her late husband put on the land.

The Defendants case is encapsulated in the Joint Amended Statement of Defence/Counter claim where the 1<sup>st</sup> Defendant denied ever selling the land in dispute to the 1<sup>st</sup> Claimants late husband and alleged in the particulars of fraud

that her signature/thumbprint was forged on Exhibit P1, the agreement executed between the parties.

The allegation of fraud raised by the 1<sup>st</sup> Defendant in their defence is a criminal act which in law must be proved beyond reasonable doubt. See Section 138(1) of the Evidence Act 2011 and in the case of **Niger guards Ltd v Usoroh (2010) 12 NWLR (pt 1208) at page 207 @ 221 the Court of Appeal per Yahaya J.C.**

**A.** – stated thus:-

“It is the law, that if the commission of a crime by a party to a proceeding is directly in issue, in any proceedings civil or criminal it must be proved beyond reasonable doubt. In this case, the allegation of fraud by the appellant against the respondent amounted to crime, but same was not proved beyond reasonable doubt. See Section 138 (1) of the Evidence Act **and Agbi Vs. Ogbelu (2006) 11 NWLR (Pt 990) 65 @ 133.**”

As to whether the allegation of fraud has been proved by the defendants as alleged in their Joint Amended Statement of Defence the 2<sup>nd</sup> defendant in his evidence under cross Examination said he did not make a formal report to the police about the alleged fraud even though he is aware that fraud is a crime. The fact that the alleged fraud was not reported to the police at all for investigation leaves much to be desired.

It is worthy of note that the 1<sup>st</sup> defendant who alleged that her signature/thumbprint was forged did not testify in this case. The 1<sup>st</sup> defendant is a material witness whose evidence would have settled the issue one way or the other. So Failure to call the 1<sup>st</sup> Defendant to testify is fatal to the Defendants case as her evidence if given would have been unfavourable to the defence. See Section 167 (d) of the Evidence Act 2011 which states thus:-

S 167- The Court may presume the existence of any fact which it deems likely to have happened, regard shall be had to the common course of natural events, human conduct and public and private business, in their relationship to the facts of the particular case, and in particular the court may presume that –

- a. ....
- b. ....
- c. ....
- d. evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

See also the case of **Okhuorobo v Aigbe (2002) 9 NWLR (pt 771) 29 @ 84** the Supreme Court held that where the evidence of a witness is needed to prove a fact, the burden is on the person who seek to prove that fact to account for the absence of the witness and not of the Court to speculate the absence of the witness. Also in the case of **Dave v Fagbemla (2009) All FWLR (pt 489) 562 at 575.** The Supreme Court held that where a party who has the duty to call a

particular witness fails to do so, it is presumed the evidence of that witness would have been unfavourable to him.

Further more in the case of **Adighue v Nwadgu (2010) 12 NWLR (Pt 1209)**

**419 @ 476** it was held that:-

“The question of who signed what, cannot be resolved at the level of counsel address. It must be resolved during oral testimony”.

Also in the case of **Aituma v State (2007) 5 NWLR (Pt 1028) 466 at 482-483 the Court of Appeal per Bulka Chuwa, J. C. A.** held that:-

“The person whose hand writing is forged is a material witness.....”

See also the case of **Alaka v State (1992) 9 NWLR (pt 265) pg. 260 @ 270**

**where Kutigi J. S. C.** said:-

“I ought to add that I agreed with Prof. Kasumu that Ajadi and Lawsweerde were vital and material witnesses in the case. They were persons whose signatures were alleged to have been forged. I think failure to call them to deny or confirm their signatures on the cheques was clearly fatal to the case of the prosecution the evidence of handwriting analyst (PW. 6) notwithstanding. Their evidence would have settled the point in issue once and for all (see **R. Kuree WACA 175, Waubal & Anor V. Kano N. A. (1965) NWLR 15.**”

Still on the issue of fraud, the Defendants pleaded in paragraphs 18 and 19 of, that they shall rely on the National identity card of the 1<sup>st</sup> Defendant and the

certificate of thumbprint issued by the Nigeria Police force to show that the one in the documents the Claimants are relying on is different from her own. But throughout the length and breadth of the evidence of the 2<sup>nd</sup> Defendant or the entire case for the defence, the National identity card of the 1<sup>st</sup> defendant and the Police certificate of thumbprint were not tendered in evidence for comparison if any with the Claimants documents. Section 167(d) of the Evidence Act would also come into play to the effect that had they been produced, they would have been unfavourable to the defendants.

The 2<sup>nd</sup> Defendant tendered an Oba's approval which he said is the genuine one for his grandfather Okundia Izekor and that the one the Claimants are relying on is not the genuine one. The 2<sup>nd</sup> Defendant did not point out the discrepancies in Exhibit P, the Claimants approval to show that Exhibit P is not the genuine Oba's approval. Secondly no member of the family of 2<sup>nd</sup> Defendants grandfather who are in possession of the supposed original copy of his own Oba's approval was called to testify to that effect. Furthermore there is no evidence that 2<sup>nd</sup> Defendant was ever a member of the Land Allocation Committee for Ugbekun village Ward 33/E or that signed Exhibit P neither did any member of the committee at that time appear in court to say that the Oba's approval the 1<sup>st</sup> Claimants late husband has is not the genuine one.

So it does not lie in his moath to say which of Exhibit P or D2 is genuine. So his evidence in that regard is unacceptable.

Exhibit D is a Deed of Gift between the 1<sup>st</sup> defendant and 2<sup>nd</sup> defendant and by which the 1<sup>st</sup> Defendant allegedly gave part of the land she had sold to 1<sup>st</sup> Claimants husband to 2<sup>nd</sup> Defendant as a gift.

Exhibit D is dated 22<sup>nd</sup> February 1983. Exhibit P1 is the first receipt the 1<sup>st</sup> Claimant husband obtained from 1<sup>st</sup> Defendant for the first piece of land. It is dated 20<sup>th</sup> June 1977. Exhibit P2 is the second receipt for the second portion of land containing the extra portion of land the 1<sup>st</sup> Claimant husband bought from 1<sup>st</sup> Defendant and is dated 30<sup>th</sup> August, 1977 and is contained in Exhibit P6. By the two receipts dated 20<sup>th</sup> June 1977 and 30<sup>th</sup> August 1977, the 1<sup>st</sup> Defendant had divested herself of her interest in the two portions of land including the extra portion and therefore had no interest in the land in dispute to transfer to the 2<sup>nd</sup> Defendant in February 1989. The law is that where the equities are equal or where the issue of priority of interest arises and the grant relates to the same piece of land, the first in time takes priority. See **Owie v Ighiwi (2005) 124 LRCN Pg. 503 at 523.**

It is also the law that nobody can give what he does not have. See **Egbuta v Onuma (2007) 10 NWLR (Pt 1042) 298 at 316**, Court of Appeal per Saulawa J.C. A.

“It is trite that nobody can give what he does not have or possess:- *nemo dat quod non habet*, See **Fagoro v Bejioku (1988) 2 NWLR (Pt 76) 263**”

DW1 an Assistant Chief Deeds Registrar in his testimony identified the certificates of occupancy (Exhibit P4) issued by his office but stated that Exhibit P4 does not have a survey plan and registration particulars and recitals were not quoted. He said the presentation stamps were at the back of the document and he did not deny the fact that Exhibit P4 emanated from his office. He also said he knew Mr. Aghana Enofe as Director of Lands and Mr. Esealuka, the Chief Lands Officer who is retired. Both officers signed Exhibit P4. The signature of the Military Governor at that time is also on Exhibit P4. The defendants did not in their pleadings challenge the authority of the Exhibit P4 and P5. So Exhibits P4 and P5 are accepted as genuine documents.

The Defendants relied on their pleadings in their Joint Amended Statement of Defence in support of their counter claim. The counter claim of the Defendants by reason of their pleadings in their Joint Amended Statement of Defence is based on forgery and fraud. This issue has been considered in the course of this Judgment and I do not wish to repeat myself.

On the issue of trespass and damages, the Claimants in paragraphs 12, 13, 18, 22, 23, 24, 27 pleaded the acts of trespass of the Defendants into her late husband's land. She also gave oral evidence in proof of same. The Litigation Survey Plan Exhibit P7 also shows the building sand deposited on the land in dispute by the Defendants which constituted the act of trespass. Exhibit P7 supports the Claimants allegation of trespass against the defendants which was not denied.

The 2<sup>nd</sup> Defendant in his evidence in Chief said:

“After my mother gave me the land, I deposited two trips of sand on the land”

2<sup>nd</sup> Defendants evidence therefore confirms the Claimant's case for trespass.

In the case of **Alhaja Silifatu Omotayo v Co-operative Supply Association (2010)**

**52 WRN 1 at 35**, the Supreme Court held thus:-

“... Every unlawful and unauthorized entry on land in possession of another is a trespass for which an action in damages lies even if no actual damage is done to the land and fixture which it is an actual trespass.”

See also **Ogbimi v Niger Construction Ltd (2006) 9 NWLR (Pt 986) Supreme**

**Court again per Oguntade J. S. C.** had this to say:-

“It is trite law that trespass to land is actionable at the suit of the person in possession of the land. That person can sue for trespass even if he is neither the owner nor a privy of the owner.

This is because exclusive possession of the land gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrong-doers except a person who could establish a better title. Therefore, anyone other than the true owner, who disturbs his possession of the land, can be sued in trespass and in such an action, it is no answer for the Defendant to show that the title to the land is in another person.”

I am therefore satisfied that the Claimant has established that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants trespassed into her land as shown in Exhibit P7.

On the whole, after a careful consideration of the documentary and oral evidence of the parties I am convinced that the Claimants have established on the balance of probabilities by credible evidence through Documents of title and long acts of possession and enjoyment of the land that 1<sup>st</sup> Claimant's husband was in possession of the land in dispute during his life time having acquired same from the 1<sup>st</sup> Defendant. On the other hand the Defendants have failed in their defence and also failed to prove their counter claim. The Defendant's counter claim is accordingly dismissed.

Finally, Judgment is entered for the claimants and against the Defendants

as follows:-

6. It is declared that the parcel of land situate and lying in the New Layout of Ugbekun village, Ward 33/E, Ugbekun Quarters, Benin City, measuring 50 feet by 100 feet demarcated with BEACON BLOCKS NUMBERS B.T.P.O.U.E. 35, 36, A.D. 102 and 103 and covered with LICENSED SURVEY BEACON BLOCK NUMBERS BF.8447, BF.8448, BF.8449 AND BF. 8450 together with the structure thereon and more particularly delineated in the litigation survey plan NO. ISO/ED/D27/2008 constitutes the legitimate inheritance of the 1<sup>st</sup> Plaintiffs late husband and father of 2<sup>nd</sup> Plaintiff Mr. Samson Ohimai Igbavboa having validly purchased same from the 1<sup>st</sup> Defendant.
7. It is declared that the parcel of the land situate and lying in the New Layout of Ugbekun Village Ward 33/E, Ugbekun Quarters, Benin City measuring 50feet by 100feet and an extra parcel of land overlooking a moat in abuttal and dimensions, demarcated with licensed survey Beacon Block Numbers BF. 8449, Bf. 8448, BF.8687 and BF.8688 and more particularly delineated in the litigation survey plan No. ISO/ED/D272008 dated 2/10/08 constitute the legitimate inheritance of the 1<sup>st</sup> Plaintiff's late husband and father of the 2<sup>nd</sup> Plaintiff's late Samson Ohimai Igbavboa having validly purchased same from the 1<sup>st</sup> Defendant.
8. It is declared that the certificate of transfer dated 20/6/77 and 30/8/77 evidencing the transfer of the said land by the Defendant to late Mr. Samson Ohimai Igbavboa is valid and still subsisting and Defendant's act of putting trips of sand on the said land amounts to trespass for which the Defendant is liable in damages.
9. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are perpetually restrained by themselves, their servants, agents and privies from further trespassing, interfering or dealing with each of the said parcel of land and building thereon as same is inconsistent with the rights of the Claimants

10. Damages of N500,000 is awarded as damages against the defendants and in favour of Claimants.

EDIGIN E. A.  
JUDGE  
24/06/2016

Mrs. E. E. O. Uloho appears for the Claimant.  
A.I. Osunde Esq. appears for the Defendant.