

IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP THE HONOURABLE JUSTICE EFE
IKPONMWONBA- JUDGE

ON TUESDAY THE 25th DAY OF JULY 2016

BETWEEN

SUIT NO: B/476/96

MRS. TAWA IDUBOR PLAINTIFF/RESPONDENT

AND

MR. EHI OGBEIFUN DEFENDANT/APPLICANT

JUDGMENT

The claim against the Defendant is for:-

- a) A Declaration that the claimant is the owner and entitled to a statutory Right of Occupancy over a piece of Land measuring 100 feet by 200 feet situate at the New Layout of Ugiokhuen Village, Benin within the perimeter Survey Layout of Ugiokhuen Village and bounded by the Ugiokhuen Village and Government Reservation Area (G. R. A), Benin City and the Ugbor Village by Benin-Ugbor Road in Benin City, which is within the Jurisdiction of this Honourable court. The said land is verged RED and Marked parcel ðAö in Litigation Survey Plan No OSA/2373A/ED03 dated 20/10/2003 filed in this suit.
- b) Perpetual Injunction restraining the Defendant, his servants, Agents or privies, howsoever described from further trespassing upon the claimant's land described above.
- c) N500,000.00 Damages against the Defendant for the trespass committed on the said land since December, 1995.

While the counter claim against the Claimant is as follows:

- 1) A declaration that the defendant is the person entitled to a Certificate of Occupancy or stating right of occupancy over the piece or parcel of land measuring 100ft 200ft approximately lying and situate at Ugbor Village Area Ward 36A Benin City and particularly delineated in red in the defendant litigation suing plan No. 150/ED/D35/2004 dated 16-7-04 attached to the further ordered statement of defence and counter claim the nominal rateable value of the land is N500.00 per annual.
2. N2,000,000.00 as special damages for wantonly destroying the defendant poultry houses under construction and partially damaging one other poultry home and killing 200 birds.

3. N1000,000 (One Million) general damages against the claimant for trespass into the defendant's land.
4. An order of perpetual injunction restraining the claimant her servants, agents, privies and assigns from any further acts of trespass into the said land.
5. Any other reliefs.

The case of the claimant is that she acquired a parcel of land measuring 100 feet by 200 feet situate and lying in the New layout of Ugiokhuen Village covered or within Survey beacon blocks number MM5477, MM5476, MM5479 and MM5478. The said land was acquired from one Mr. Christopher Obanor who is a community pointer and who became seized of the large piece or parcel of land measuring 200 feet by 300 feet vide an Application dated 18th May, 1975 for a Building plot through the Elders/Plot Allotment Committee, Ugiokhuen Village Ward 36A/ to His Highness Akenzua 11, CMG the Oba of Benin, which Application received the Oba's Approval on the 10th July, 1975.

The land according to the claimant was surveyed in 1988 by Mr. S. A. O Emodi, a licensed surveyor. After acquiring the land, the vendor approached her and requested that the claimant allow one of his friends (an Ibo man) to farm on the land which she obliged him since there was no immediate plan for its use.

Sometime in October 1995, the claimant on a routine check of the land noticed that someone was trespassing on the said land and on enquiry, she discovered that it was the mother of the Defendant who is now deceased. A foundation was constructed which later translated into a wooden poultry. The matter was immediately reported to the vendor who promised to look into it. It was also reported at the Ugbor police station after she claimed that the warning sign on the land which she placed there was removed.

On being invited by the police, the mother of the defendant claimed that she bought the land from someone who is now deceased. All efforts and promises made by third parties to settle the dispute was futile and all efforts to stop the Defendant from further trespass proved abortive.

It is revealed in evidence and is not in dispute that between 1965 and 1968 there was a joint Allotment Committee known as òIrrhiri/Ugiokhuen Plot Allotment Committeeö which was constituted by Oba Akenzua 11 for Irrhiri and Ugiokhuen Communities. Ugbor did not have an Allotment Committee till 1972 when a plot Allotment Committee was constituted for Ugbor Community.

The claimant called three additional witnesses together with herself in support of her claim.

PW1 who is the Claimant testified that one Mr Osaheni Uwuigbe was one of the persons who followed the defendant to the police station and promised to look into the matter and pleaded with the DPO that the case be settled outside the station. The said Osaheni Uwuigbe was unable to settle them as all efforts or promises to settle the case amicably failed.

In May, 1996 when she visited the land in dispute, she discovered that the defendant was fast developing another portion of the land by constructing a fresh foundation for a poultry. Undercross examination, she admitted that Mr Obanor sold the land and the land was in the new layout of Ugiokhuen Village. According to her, she bought the land in 1977 and Mr Obanor personally took her to the land. It was 100feet by 200feet. She insisted that the vendor was a responsible Nigerian, a native of Ugiokhuen Village and not a land speculator.

On further cross examination she said in 1996 she discovered that there was a Wooden Poultry after she discovered the foundation in 1995.

She said that the police invited all the parties in question and denied the fact that the police could not settle the matter because it was a civil matter. She denied that the vendor agreed to give her another land and also denied that the defendant pleaded with Obanor to reallocate another land to her.

Claimant insisted that her land is in Ward 36A of the New layout of Ugiokhuen Village which was evidenced by a copy of the community map showing the boundaries of the community. She also tendered a litigation survey plan prepared by her surveyor Osaikhuiwu.

She denied destroying the Defendant blocks, and 200 birds, 30 crates of eggs, the poultry or any other thing on the land. She denied that the Oba's approval was forged and admitted that she and her husband were charged to the Magistrate Court but were both discharged and acquitted.

She insisted that she did not destroy the defendant's property nor connive with the police to oppress the defendant.

PW2, Mr Christopher Obanor testified that he transferred the land situated at Ugiokhuen Village and measuring 100feet x 200feet to PW1 the claimant. He told the court the persons he shared boundary with which include one late Pa Efix Obanor, Lucky Efix Obanor and Johnson Obanor who have all transferred to different people. He also tendered a document evidencing the transfer of the land to PW1.

He informed the court that one Ibo man in the community applied to farm on the land and he obtained permission from PW1, for him and he farmed on the land for 10 years. He said that as an indigene of Ugiokhuen community, he applied for a land measuring 200feet x 300feet and it was granted. It is out of it, that 100feet x 200feet was transferred to PW1.

He further testified that when PW1 came to report to him that someone had trespassed on the land, he accompanied her to see and advised that a sign board be placed on the land. He was later informed that the sign board had been removed, so he advised PW1 to go to the police station to report. He said he was invited by the Ugbor Police Station and he made his statement. One late Osaheni Uwuigbe begged to be allowed to settle the matter between parties but all efforts to settle proved abortive.

PW2 stated further that at the time he acquired the land, he was the head of the land pointers. The community appointed one Isaac Odoko who testified as PW3 and who was under him to go and point the land to him and Isaac Odoko reported back to the committee that he had pointed it to him and that the land was free from trouble.

He insisted that the land is situated in Ugiokhuen community and that Ugiokhuen Plot Allotment committee came into existence on her own in 1968 but before then it was a joint committee with Irhirhi. He denied being arrested and charged to court with the claimant and also denied been aware that the claimant and her husband were charged to the Magistrate court for destroying properties on the land.

Under cross examination he admitted that he knew that there was a Plot allotment committee called Ugiokhuen / Irhirhi. He denied that as at 1975, it was still Ugiokhuen / Irhirhi Plot Allotment Committee and added that in 1967, there was a dispute between the two communities which finally separated them in 1968.

He denied applying for a land from Irhirhi / Ugiokhuen Allotment Committee in 1975 measuring 200feet x 200feet and was granted. He contended that the name Christopher E. Obanor on the top right of the document shown to him is not his name. He stated that his native name is Aweghian Obanor. He said he was the head of the pointers and a member of the committee. He is also one of the signatories to the application.

He admitted that he signed the approval but did not fill it and that his name does not have an E as initial. He also denied the fact that there is no family land in Ugiokhuen, as it is made up of relatives.

PW2 testified that he also gave land to one Prince Albert Okojie who had a company which was no longer in existence and denied that the land is close to the one in dispute.

He agreed that Mr. Obadigie's land which he bought through him is close to the one in dispute but denied that one Kokumo had land there. He also denied that Ugbor Plot Allotment Committee gave the land to Okojie since the land in dispute is not in Ugbor but in Ugiokhuen.

He testified that before the Land Use Decree came into existence in 1978, it was Oba Akenzua that constituted the plot allotment committee in Benin. He admitted that a letter from the Oba to the members of the plot allotment committee

was sent and that he was appointed, and claimed to have the authority of appointment in his possession.

PW2 denied selling land to one Friday Oveneri and denied knowing him. He admitted knowing one Moses Airiagbonkpa whom he said he gave evidence for suit no B/581/96 and denied that the subject matter of that suit is close insisting that it is over 1000 meters away from the land now in dispute. He added that he gave evidence in that suit that the land in dispute is in Ugiokhuen Village and denied that the court found that the land was in Ugbor.

He further admitted that the land in dispute belongs to the claimant and that Ugbor have their own plot allotment committee which cannot allocate land in Ugiokhuen Village.

The witness identified Chief Reuben Iserhierrhien as the Chairman of the Ugiokhuen/Irhirhi Plot Allotment Committee till 1967 and agreed that he knows John Igbinosa and Osemwegie Osawe who are from Irhirhi but denied knowing Frank Obasohan.

He denied that the judgment stated that Ugiokhuen did not exist and also denied that he was taken to the police station because he took money from PW1 for a land that did not belong to him. He insisted that the PW1 acquired 100 by 200 from him, and said the land is not part of the Defendant's.

On being further cross examined on his name, he insisted that he bears Christopher Obanor as his name, as Obanor is his grandfather's name while Ehigiamusoe is his father's name. He explained that his father died last year, and as the eldest child there was an obituary poster for the burial which was printed by

his younger siblings in the family. He informed the court that he was conferred with an Honorary Doctorate and he now answers, Dr Chris as an abbreviation of Christopher. He said his name was put on the poster as Dr Chris Ehigiamusoe Obonor for the family. He also contended that the A initial between Christopher and Obonor is Aiweghian his native name which he also bears.

He denied that Irhirhi/Ugiokhuen Plot Allotment Communities existed until 1976 when the Land Use Act came into force and that in 1975 he applied to Irhirhi/Ugiokhuen plot allotment committee for the land.

PW3 identified himself as Isaac Odokor. He adopted his statement on Oath as his evidence to be relied on. His testimony is that, he is one of the land pointers in Ugiokhuen Community between 1968 and 1978 when PW2 was the head of the pointers.

He testified that before PW2 applied through the committee to the Oba for a piece of land measuring 200ft x 300ft, he was instructed by the Plot Allotment Committee to go and look for a free land and point to PW2. He did so and reported back to the committee. After when the application was recommended to the Oba of Benin for approval and same was approved. He insisted that the land in dispute was part of the land he pointed to PW2 which was free from dispute and the Defendant is not the owner.

Under cross examination, he insisted that he is a native of Ugiokhuen not Ugbor. He said he knows the land in dispute very well. Continuing he said Ugiokhuen has a boundary with Ugbor village and the land in dispute is in Ugiokhuen, it is 200feet by 300feet.

He said that in 1975 he was already a pointer in Ugiokhuen and that he knows the land and that it was the same land he pointed to PW2 that is now in dispute.

PW4 Otasowie Osaikhiwu, He is a chartered and registered surveyor. He adopted his witness statement on oath dated 11-3-13. He tendered 3 Exhibits which comprise of 3 survey plans.

His testimony is that sometime in 2003, the claimant commissioned him to carry out a litigation survey of a parcel of land measuring 100ft x 200ft at Ugiokhuen Village. He said he provided 2 sets, certified them and gave them to the Claimant. He explained that he superimposed both plans to show the boundaries of Ugiokhuen Village with the neighbouring Villages. He added that it revealed that the claimant land is within Ugiokhuen Village.

He said he also superimposed the Defendants plan on the Claimant's plan and it was confirmed that the Claimant's land is within Ugiokhuen.

Under cross examination, he said he prepared 3 survey plans but the first plan is more of a litigation survey plan, while the others are composite surveys explaining the survey plan. He explained that Exhibit G appears to have the same colour with others but are not the same, insisting that one is blue and the other is green. He said reference 5 is blue stating that there is an area which he called area of common interest which is an area common to the claimant and defendant. He further testified that the area verged pink is the land which was transferred to the claimant while the area in dispute is the common area which is verged blue.

He testified that Ugiokhuen community has boundary with Ugbor community and the line of the boundary is shown on the survey plan noting that Reference no 8 shows the boundary between Ugiokhuen and Ugbor.

He insisted that the said surveyed land was in Ugiokhuen community and not in Ugbor. He said he could remember if he drew the survey plan in the case, of Erebor v Oveneri except it is shown to him. He further testified that he knows that there is Ugbor road and Ugiokhuen road but does not know if there is 1st Ugbor and 2nd Ugbor road and that the land in dispute is between the 2 roads which is between Ugbor and Ugiokhuen and not between Ugbor road and 2nd Ugbor road stating that he picked the name from the road covering Benin township to Ugiokhuen.

PW4 explained that the vendor told him that the land belongs to Obadigie which was given to him by Obanor, insisting that he was not told that Alice Akedeji is the owner of a land close to that in dispute. He also testified that he was aware that the land Obanor transferred to Obadigie , Okojie and the Claimant were all in Ugiokhuen and the approval was for 200 x 300feet. He said that he was not aware that the Oba gave the land to Prince Okojie's company called Berty Tony Nig Ltd, neither was he aware that Ugbor Plot Allotment Committee recommended the land for Prince Okojie for approval.

He further testified that the features shown on the document were all that he surveyed having being taken to the land by Obanor and the Claimant. He explained that the land he surveyed had a poultry and piggery farm on it and added that Exhibit G1 was not the same although they look alike as they are two different plans.

He finally testified that all he surveyed was what he saw on the site using professional equipment and technology. The claimant closed her case. The Defendant called 5 witnesses in his defence.

DW1 is Sunday Osayande, and is the Manager of Berty Tony Nig Ltd. He adopted his statement of oath. His evidence is that the land in dispute is in Ugbor Village in Benin City. He testified that the company owns a parcel of land measuring 500ft x 500ft in Ugbor Village and that the said land is close to the land in dispute and within the same Ugbor Village. He insisted that the same Ugbor Plot Allotment Committee allocated the land in dispute to the defendants mother's vendor and to their company. Under cross examination he insisted that his company and the land in dispute share the same boundary.

He denied that there were several signboards with Ugiokhuen inscribed on them in the area and that the road on the left at the T-junction is the boundary between Ugbor and Ugiokhuen. He said the tarred road is usually called MTN mast road but did not know the name of the road. He did not know the name of the road where the company's land was located but insisted it was in Ugbor.

He denied being aware of the boundary dispute between Ugbor and Ugiokhen in the early 70s. DW2 is Orobosa Igunma. He adopted his statement on oath.

His testimony is that sometime 1979 one Mr Igbinoba a native of Ugbor brought the Defendant late mother to his father, introduced her and told his father that he had sold a portion of his land in Ugbor measuring 100ft x 200ft to her out

of 200ft x 300ft. This was done because his father owned the rubber plantation on the land. He went on to say that the Defendant's mother and his father negotiated the price of the rubber trees and she paid fully for it and his father gave her a receipt which he witnessed by signing. He insisted that land in dispute is in Ugbor Village.

Under cross examination, he said he came back to Benin in 1978 but did not know how old he was in 1979, though he was 59 years at the time of giving evidence. He said he was aware of boundary issues taken to the palace of the Oba between Ugbor and Ugiokhuen and that Ugbor won all the cases. He revealed that the boundary between Ugbor and Ugiokhuen is after Ugiokhuen village where the Okhuen is. He later said Ugbor has no boundary with Ugiokhen but had a boundary with Irhirhi. He insisted that Ugiokhen was a camp.

He denied that the Oba made the road on the left, the boundary between Ugiokhuen and Ugbor.

DW3 is Onaiwu Idurobo. He adopted his statement on oath. His evidence is that he knows the Defendant's mother; he also knows Igbinoba who is a native of Ugbor like himself. He testified that between 1972 and 1978 he was one of the land pointers for the Plot Allotment Committee in Ugbor Village and he is now the only surviving pointer.

He explained that the duty of the pointer is to show and identify land to prospective allottees to whom land was allotted to in Ugbor village. He revealed that sometime in 1973 Igbinoba applied through the Plot Allotment Committee for a land in Ugbor measuring 200ft x 300ft. That he was instructed by the committee

to go with another pointer to look for free land of the dimension applied for and point for the said Igbinoba. He did so and reported back to the committee who in turn recommended the application to the Oba of Benin, for approval and same was approved. He added that the land he pointed is the same land, part of which is now in dispute. He said he owns 100ft x 100ft which has common boundary with the land in dispute which was allocated to him by Ugbor Plot Allotment Committee. He insisted that the land in dispute is in Ugbor and belongs to the Defendant.

Under cross examination he said he lives in Ugbor village and he is known as Moso. He denied being aware of any dispute between Ugbor and Ugiokhuen that ended at the palace of the Oba of Benin. He agreed that the land he pointed to Igbinoba is surrounded by houses and that there is a poultry there.

He insisted that he was the pointer and denied that 2nd Ugbor road is actually Ugiokhen road.

DW4 is Surveyor Iyawe. He adopted his statement on oath. He testified that sometime in 1992 the Defendant's mother commissioned him to carry out a property survey on her land in Ugbor village measuring 100ft x 200ft. After they showed him the land, he produced a survey plan dated 13-2-92. He revealed that it is the land that is now in dispute. In July 2004, the Defendant's mother came back to him to carry out a litigation to survey. She came with Defendant to his office. He was shown the Oba's approval, deed of transfer, property survey and the writ of summons. He said he was shown the land and the boundary and features were confirmed to him which included the previous property survey beacons and ward pillars. He testified that there were poultry houses on the land; one was partly damaged and the other was completely destroyed. He also saw the well which was

destroyed. He prepared the litigation survey and delivered them. He also insisted that the land in dispute is in Ugbor and is located between 1st and 2nd Ugbor roads. He insisted that Ugiokhen Plot Allotment Committee did not exist, only Irhirhi/Ugiokhen Plot Allotment Committee. He referred to suit no. B/581/96 between Erebor vs. Oveneri & Others and revealed that he produced the litigation survey filed and tendered in that suit and the land in that case is close to the land in dispute now which is along Poultry road in Ugbor village.

Under cross examination he said the land in dispute is near the boundary of Ugiokhuen and Ugbor but he could not estimate the distance. He said he is not familiar with Ugiokhuen village road. He agreed that Poultry road on his survey plan could be Edosomwan Street. He said the road leading to the land in dispute is directly opposite Ugbor parliament to the right. He agreed that where the tarred road stops is where the land in dispute is and denied knowing that the house opposite the land in dispute belongs to late Prof. Osagie and that it was sold to him by Johnson Obanor a younger brother of the Claimant's vendor. He insisted that when he surveyed, it was all vacant land.

PW5 is Ehimwenma Ehis Ogbeifun. He is the defendant in this suit. He adopted his statement on oath. He testified that his mother was the original Defendant in this suit but he was substituted for her when she died. He said the land in dispute belonged to his late mother but now belongs to him. That the land was part of the land that one Igbinoba was allocated by the Oba of Benin on 23/3/73 and it is within Ugbor Village Plot Allotment Committee jurisdiction. He said Igbinoba had sold and transferred 100ft x 200ft of the land to his late mother and she was given a copy of the Oba's approval. Later she commissioned a

surveyor to carry out a property survey. Igbinoba then introduced her to one Eboigbe Iguma who owned the rubber trees on the land from whom she bought the trees, then she began to farm on the land. Sometime in April 1994, she built and maintained poultry houses on the land. He said he was always with her. In March 1996, the Claimant planted a sign post on the land but it was removed. In May Claimant reported the matter to the Police who said it was a civil matter. He revealed that the Claimant got Obonor (PW1) arrested and he was released after he proved that both Ugiokhen and Ugbor Village would settle the matter amicably. It was later agreed that the Claimant would be allocated another plot of land but she rejected the proposal.

DW5 said his mother had put a foundation for a 6 room building on the land before she started the poultry farm. He insisted that there was never an Ugiokhen Plot Allotment Committee so it could not have allocated the land to Obonor as only Ugbor Plot Allotment Committee had authority to allocate land in Ugbor. He said he had common boundary with Godwin Isibor, Alice Akindeji, Onaiwu Idurobo and Mr Salami whose lands are not in dispute.

He testified that the Claimant and her husband destroyed the well, 1000 cement blocks, a poultry house and particularly destroyed the other poultry houses on the land in dispute. 200 live birds died in the process and the Claimant and her husband were charged to Court for malicious damage but were discharged. He insisted that the Claimant has no land in Ugbor and is not the owner of the land in dispute. Referring to the Obonor's approval of the vendor of the Claimant, he said it did not relate to the land in dispute. He stated that the Claimant's approval is a forgery as the Ugiokhen Plot Allotment Committee does not exist and had no

power to allocate Ugbor land. He said the subject matter in suit no. B/581/96 is in the same area as the land in dispute as they are both in Ugbor Village and that the relevance of the suit is that the same Christopher Obonor and the Ugiokhen Plot Allotment Committee allocated the subject matter of that suit to the 2nd Defendant and the Court had adjudged the subject matter to be in Ugbor Village and that Ugiokhen Plot Allotment Committee did not exist.

In proof of his counter claim, he said his mother was in peaceful possession from 1973 when she bought the land till October 1995 when the Claimant forcibly broke into the land to lay claim.

He enumerated all that was destroyed and the cost amounting to N403,000 and urged the Court to grant his counter claim in his statement of defence.

Under cross examination he disclosed that when his mother bought the land in 1978 he was 6 years old and revealed that from 1980 as a young child he followed her to farm on the land and it was still a forest at the time. He said that the property opposite the land belongs to Prof. Osagiesø family and the land immediately after the land in dispute belongs to a Barrister Aibangbee who bought from Mrs. Akindeyi.

He agreed that the road leading to the land in dispute is almost opposite Ugbor parliament and is called Ehikhalo Edosomwan Street.

He denied that the 1000 blocks belongs to the Claimant and not his mother and denied that no poultry was damaged insisting that 200 live birds out of 2000 died.

He denied being aware that at the time of filing in 1996, his mother was restrained from going into the land and agreed that MTN was given part of the land to erect a mast in 2006. He denied that his mother destroyed any foundation on the land and insisted that the land is in Ugbor and not Ugiokhuen.

At the close of evidence, both parties filed and adopted their final written addresses as provided by the rules of court.

For the Defendant, A. A. OMORODION ESQ formulated 2 issues for determination to be:-

1. Whether the Claimant has proved her claim against the Defendant on the balance of probabilities.
2. Whether Ugiokhuen Plot Allotment Committee existed at any time as a separate Plot Allotment Committee constituted by the Oba of Benin Akenzua II.

Learned Counsel submitted that the Claimant has totally failed to prove her claim on the balance of probability in line with the duty placed on her by the Evidence Act.

He went on to contend that it is settled that in an action for declaration of title to land, the Claimant must succeed on the strength of his case and not on the weakness of the defence. He referred to the following authorities:-

BELLO VS. EWEKA (1981)1 SC 101 AT 117
KODINLYE VS. ODU (1935)2 WACA 336
LAWSON VS. ADIBULU (1997)6 NWLR (PT.507) 14
ONUWAJE VS. OGBEIDE (1991)3 NWLR (PT.178) 147

Learned Counsel went into the principles governing allocation of land under Benin Customary law and referred to the following cases:-

K S OKEAYA VS. MADAM AGUEBOR (1970)1 AWLR 8
AIGBE VS. EDOKPOLO (1977)2 S C 1
ARASE VS. ARASE (1981)5 S C 33.

He contended that there is evidence before the court from **DW3** that the Defendant's vendor complied with the procedural steps in getting the grant in 1973 of the land measuring 200 x 300ft.

He urged the court to hold that the Claimant has failed to prove her claim against the Defendant on the balance of probabilities and resolve issue 1 in favour of the Defendant.

On issue two, he referred the court to the judgment of the High Court in B/581/96 and B/179/99. He contended that the so called Ugiokhuen Plot Allotment Committee was not constituted by the Oba of Benin and therefore was illegal. He urged the court to so hold and that the said Ugiokhuen Plot Allotment Committee did not exist and so lacked the authority to recommend **Exhibit C** which **PW1** used to acquire the land he sold to Claimant and resolve issue 2 in favour of the Defendant.

On the counter claim, Learned Counsel formulated one issue to be whether having regard to the totality of the evidence before the court, the Defendant is entitled to judgment on his counter claim?

Counsel contended that having established that the Ugiokhuen Plot Allotment Committee did not exist, then the Defendants case stood and remained. He submitted that the Defendant has proved his counter claim upon a balance of probabilities and is therefore entitled to a declaration of title to the land in dispute.

Regarding the damages Learned Counsel contended that the Claimant is vicariously liable for the destruction and urged the court to so hold on her admission that it was her sympathizers that did the destruction. He urged the court to award the sum of N2,403,000 as special and general damages as claimed.

Concluding Counsel submitted and urged the court to hold that the Claimant has failed to prove her claim against the Defendant upon a balance of probabilities as the evidence by the Defendant and his witnesses was not contradicted in any way by the Claimant and her witnesses.

He urged the court to hold that the Defendant has proved his counter claim against the Claimant upon a balance of probabilities and enter judgment for the Defendant in terms of his counter claim.

For the Claimant, Learned Counsel **Chief A. B. THOMAS** saw the main issue for determination to be whether the land in dispute is within Ugiokhuen Community or Ugbor Community.

He submitted that from the Oral and documentary evidence of the Claimant and witnesses the land in dispute is located in Ugiokhuen by the fringe boundary with Ugbor Community.

He contended that the Claimant has proved that she acquired the land in dispute through the Plot Allotment Committee as required under Benin Native Law of acquisition of land.

He contended that the Claimant has shown by evidence that the Ugiokhuen Plot Allotment Committee existed between 1968 and 1978.

He also referred to a judgment delivered by **Hon. Justice E. Ahamioje** in B/147/2013 on 17/4/14.

Referring to the 2 cases cited by the opposing counsel, Learned Counsel distinguished them and concluded that being judgments of courts of coordinate jurisdiction, they were not binding on this court.

Learned Counsel contended that it is trite that parties are bound by their pleadings which comprise of Oral and documentary evidence.

He referred to the case of

**KLIFCO (NIG) LTD VS. N.S.I.T.F.M.B (2005)
6 NWLR (PT.922) PG. 445 AT 450**

and urged the court to hold that the Claimant has proved her ownership of the land in dispute.

He contended that the Defendant introduced the non existence of Ugiokhuen Plot Allotment Committee but in his relief, did not ask for the nullification of the Oba's approval on the ground that the Committee did not exist.

He added that the Defendant has not proved this non existence. He referred to the case of **OKOYE VS. NWANKWO (2015) VOL. 239 LRCN PG. 127 AT 134.**

He urged the court to hold that the land in dispute measuring 100 x 200ft is in Ugiokhuen Community.

Learned Counsel submitted that in an action for Declaration for title, when the boundary is in dispute the boundary that needs to be proved is that which is on the side in dispute.

He referred to the case of **OMOREGIE VS. IDUGIEMWANYE (1985)2 NWLR (PT. 5) PG.41 AT 43.**

He referred the court to the evidence of the Claimant's witness no 3, the Surveyor and urged the court to prefer it to that of **DW4** as more credible.

He urged the court to evaluate all the Survey Plans and hold that the Claimant has proved that the land in dispute is in Ugiokhuen Community within the jurisdiction of Ugiokhuen Plot Allotment Committee Ward 36A Benin City and grant the reliefs as stated in the further amended statement of claim No 2 and dismiss the counter claim of the Defendant.

He contended that having successfully proven her entitlement to a declaration of ownership, the grant of perpetual injunction will follow and urged the court to grant an order for perpetual injunction.

He referred to **OLANIYAN VS. FATOKI 2013 17 NWLR (PT.1384) PG. 477.**

On the Defendant's counterclaim he submitted that the claim for special and general damages has not been proved.

Learned Counsel submitted that a claim for special damages must be strictly proved.

He referred to the following cases:

ODIBA VS. AZEGE (1998)9 NWLR PT.566 PG.370 AT PG.372.

NBC PLC VS. UBANI (2014)4 NWLR PT.1398 PG.421.

EYA VS. OLOPADE (2011)11 NWLR (PT.1259) PG. 505.

GARI VS. SEIRAFINA NIG. LTD (2008)2 NWLR (PT.1070) PG.1 AT 7.

He contended that the mere pleading and particularization of items of claim is not sufficient. He submitted that the Defendant cannot by conjecture hold the Claimant liable for the alleged destruction of a poultry and its holdings.

Counsel submitted that the Claimant had successfully proved her case against the Defendant and urged the Court to grant all the reliefs and dismiss the counter claim with cost.

Learned Counsel to the Defendant filed a reply to the Claimants written address. I have looked at it and it appears to be a correction of Claimants counsels representation of the evidence. The evidence is already before the court. The court will rely on its own record of proceedings and not on the evidence presented by Counsel. It is accordingly discountenanced

The procedure for obtaining land in Benin is well known and the Courts have taken judicial notice of the process. In **Vincent Esamagho vs. Aibangbee Ikhimwin** Suit No. B/18/66 decided by Irikefe J (as he then was) on 17/5/65 His Lordship said inter alia;

“All land in Benin Division is vested in the Oba of Benin as trustee for the beneficiaries, the Benin people. A Benin, desiring land on which plot Allotment Committee in which the land is situated. The committee carries out an inspection of the site in order to ascertain its location and in order also to be able to recommend to the Oba, whether the plot desired should be granted to the Applicant, it being free of dispute. Upon receipt of such recommendation, the Oba approves the grant of the land shown the Applicant who thus becomes beneficial owner thereof in accordance with Benin custom. The above facts are so notorious and so regularly canvassed by parties that Courts has taken judicial notice of them.”

See the following cases:-

K. S. Okeaya vs. Aguebor (1970) 1 ANLR 1,

Atiti Gold vs. Osarenren (1970), ANLR 132,

Aigbe vs. Edokpolor (1977) SC 1,

Arase v. Arase (1981) 5 SC 33,

Bello v. Eweka (1981) 1 SC 101

In the instant suit, both parties appear to have followed the above usual procedure. It is trite that in a claim for declaration of title, the onus lies on the Claimant or the counter claimant as the case may be, to satisfy the Court that he is entitled on the evidence adduced by him to the declaration. He must rely on the strength of his own case and not on the weakness of the opposite party's case except where such supports his case. See **Okafor & Ors vs. Idigo III & Ors.** (1984) NSCC 360.

From the state of the evidence before me the issue I have formulated for determination is:-

Whether by the evidence led, the Claimant or the counterclaimant have proved their claim to be entitled to the reliefs sought.

In **Magaji & Ors. Vs. Cadbury Nig. Ltd.** (1985) 2 NWLR (pt.7) page 393;

Obaseki JSC held as follows:-

It is the duty of the party who seeks a declaration of title to land to establish evidence.

The onus lies on the Plaintiff to satisfy the Court that he is entitled to the land on the evidence brought by him.

In *Idundun vs. Okumagba* (1976) 9 6 10SC page 227, the Court listed five recognized methods by which ownership of land may be established to be:-

- (1) Proof by traditional history or traditional evidence.
- (2) Proof by grant or production of document.
- (3) Proof of acts of ownership extending over a sufficient length of time, numerous and positive enough as to warrant the inference that the person exercising such acts are the true owners of the land.
- (4) Proof of acts of possession.
- (5) Proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such land would in addition be the owner of the land in dispute.

See **Shadudu vs. Algaita** (2006) 2 FWLR (pt.317) 3261 at 3263.

In the instant case, it would appear to me that both parties i.e. the Claimant and the Defendant tried to establish their respective ownership of the land in dispute mainly by proof of grant or the production of documents of title.

The Claimants evidence before the Court is that she came by the land in dispute by purchasing it from PW2. PW2 testified that he applied for land

measuring 200ft x 300ft and it was approved after the necessary procedure was followed. It is out of this land that he transferred 100ft x 200ft to the Claimant. He applied through Ugiokhen Plot Allotment Committee.

On his part, the Defendant gave evidence that his mother the original Defendant who has since died, bought the land from one Igbinoba who applied through Ugbo Plot Allotment Committee.

From the above, each party bought 100ft x 200ft from different Plot Allotment Committees. The Defendant is saying that Ugiokhen Plot Allotment Committee does not exist so could not have recommended the land for approval. At this point one begins to wonder if the parties are talking about the same parcel of land. However, seeing that it is in evidence that the Defendant put a foundation and structures which turned out to be poultries on the land and Claimant has said that the Defendant put a poultry on her land, it is clear that they are talking about the same land. Further the Litigation survey plans of both parties have shown the land in dispute to be the same.

The Claimant in her evidence said the land is located within Ugiokhuen Village area. All the witnesses she called said so. The litigation survey plan tendered by Claimant i.e. Exhibit G1 described the land as being in Ugiokhen.

PW2 has described how he acquired the land which is in dispute. That is by direct grant from the Oba of Benin through the Ugiokhuen Plot Allotment Committee in 1975. His evidence is supported by PW3 who says he was the pointer that pointed the land to him and that it was free from encumbrance.

In Uhunagho vs. Okojie & Ors. (1982) NSCQ at page 913 it was stated that the purpose of the inspection (pointer) was to locate the land to be allocated with certainty and ensure that it is dispute free.

There is evidence from the Claimant that in 1965 the Oba of Benin established the Irhirhi/Ugiokhuen Plot Allotment Committee. There is further evidence that because of problems arising between the two communities they separated and by 1968 began to have their individual Plot Allotment Committees. The Defendants case is that the Oba did not establish the Ugiokhen Plot Allotment Committee therefore it did not exist and did not have authority to recommend land for approval by the Oba thereby making the Oba's approval fraudulent.

PW2 said he was a member of the Ugiokhen Plot Allotment Committee. As much as Learned Counsel for Defendant tried to shake the witness, it is my belief that there was no success. He insisted that the Oba recognized the Ugiokhen Plot Allotment Committee and that it existed.

I have looked at Exhibit C the Oba's approval which PW2 handed over to the Claimant. PW2 signed as one of the members of the Committee. The Defendant has not shown in any way that it was not signed by the Oba of Benin or that the Oba's signature was forged.

It is trite that forgery is a very serious imputation and needs to be pleaded with particularity and proved strictly.

I find that I am not convinced that Ugiokhen Plot Allotment Committee did not exist between 1968 and 1978. As a result I find the said Exhibit C is genuine and valid.

Having said that, there are two claims before the Court. The next question now would be who has a better title. Both parties trace their grant or title to the Oba of Benin.

It is clear from the cases cited above like Arase vs. Arase (supra) Okeya vs. Aguebor, Bello vs. Eweka etc, that, in proving title under Benin Customary law, title is not always established merely by production of a document to which the Oba's approval has been endorsed and this is particularly so, where as here, each of the parties can produce such a document.

Coker JSC in Atiti Gold vs. Osarenren (supra) at page 134 stated:-

“The question at all times was which of the parties had made a good title to the land and certainly not which of them first obtained the Oba's approval which according to the evidence again rightly accepted by the learned Chief Justice, was but a single though culminating step in a whole chain of events and conditions to be strictly fulfilled by a prospective purchaser (and I would respectfully add that the production of the Oba's approval sometimes and more so in cases of competing approvals by the Oba in respect of the same land, is only one of many steps though a culminating step in proof of title to the said land).”

Claimant tendered Exhibit C an Oba's approval dated 18/5/75 and the Defendant tendered an Oba approval as Exhibit K dated 15/2/73. The question now would be who has a better title between both parties who both trace their grant to the Oba of Benin.

The competing claim as between the Claimant and the Defendant in respect of the land in dispute fall to be decided as between the grant made to Christopher Obonor as per his application dated 18/5/75 and approved by the Oba of Benin on 10/7/75 as per Exhibit C and the grant made to Amasowomwan Igbinoba as per his application made on 15/2/73 and approved by the Oba of Benin on 23/3/73 as

indicated in Exhibit K, they both being predecessors in title of the parties in this suit respectively.

On the decided cases referred to above, under Benin Customary law, the earlier grant is superior to and has a better title than the latter grant where both relate to one and the same piece of land.

I had earlier held that both parties had proved due compliance with the preliminary steps leading to the Oba's approval as well as the approval itself. Idigbe JSC in *Arase vs. Arase* (1981)5SC 33 emphasized the importance of proof of these preliminary steps. It follows therefore that before 10/7/75 when the approval in Exhibit C was signed by the Oba of Benin in 1973, he had divested himself of the title to the land in dispute in 1973, so he had nothing to grant to the Claimant. See the case of **Finnih vs. Imade** (1999) 1855 page 1.

Assuming but without conceding that I am wrong in the above summation, I shall now go ahead to consider the evidence as presented and as it affects this suit. Both parties produced litigation survey plans to the Court.

The Claimants surveyor testified as PW4. It has long been established by a plethora of decided cases of the Supreme Court that in a claim for declaration of title to land a Claimant must produce sufficient evidence to ascertain the definite and precise boundaries of the land claimed, in order to be entitled to the grant. See the case of **Arabe vs. Asanlu** (1980) 5 ó 7 SC 78, **Emiri and 4 Ors. (for the Emiri family) vs. Imeyah and others** (1999) 4 NWLR (pt.599) page 442.

Both litigation surveys of course show that the land claimed by the Claimant and the Defendant is situated in Ugiokhuen and Ugbor respectively.

A look at Exhibit G2, the composite plan drawn by PW4 which he says is a superimposition of the Defendant's litigation survey on the Claimant's litigation survey shows that the Claimant's land is in a portion of land verged blue which is purportedly part of Ugbor. He has drawn a portion of Ugiokhuen overlapping a portion of Ugbor and this definitely is not to the advantage of the Claimant.

On this plan the nearest boundary man to the Claimant is the land of one Mr Osakue and one J. E. Iriabe said to be in Ugiokhuen. No mention was made of them in the evidence and neither were they called. Claimant actually insisted that she did not know her neighbours. It is to be noted that even the man who farmed on the land for 10 years was not called.

PW2 testified that he sold land to Prince Okojie's company Berty Tony Company but that land is not reflected and a representative of the company testified for the Defence. He said they bought a parcel of land measuring 500ft x 500ft in Ugbor through Ugbor Plot Allotment Committee. He went on to say that that land has a boundary with the land in dispute. It is reflected in Exhibit J1, the Defendant's litigation survey, but not in the Claimant's. The confusion here is if PW2 said he sold to Berty Tony company and he said he had 200ft x 300ft, yet they say they bought 500ft x 500ft from Ugbor, where is the extra land from?

As if that was not enough confusion, DW3 one Onaiwu Idurobo testified that he shares the same boundary with the Defendant. His presence is reflected in exhibit J1, the Defendant's litigation survey, but not on the Claimant's. Further from Exhibit D1, the litigation survey of the Claimant, her nearest neighbours are Austin Erebor and Moses Airiagbonkpa whose land abuts the former and who were both allocated by Ugbor and Ugiokhuen respectively.

PW2 said he sold to one Mr Obadigie and Prince Okojie's company, Bert Tony & Co. yet those boundary men are not reflected on the litigation survey of the Claimant and none of them gave evidence.

Consequently in view of all the above, I find as a fact that the Claimant has not proved her case on the balance of probability to entitle her to the reliefs sought.

There is no doubt that there is a problem of boundary between Ugbor and Ugiokhuen Communities. If it is not sorted out both communities will continue to use this problem to deceive and dupe innocent people looking for land to purchase.

The Defendant has a counter claim. I will now consider the case of the Defendant as Claimant in the counterclaim. His case basically is that Ugiokhuen Plot Allotment Committee does not exist and therefore cannot recommend land for approval to the Oba of Benin.

From the evidence before this Court, it is gathered that Ugiokhuen and Irhirhi operated together as a ward from 1965 but that in 1968 they separated due to differences and became separate wards that had their own Plot Allotment Committees. From the defendant/counter Claimant, there is no evidence that the above contention is false apart from the fact that they say so. I find that, that is not sufficient. The Defendant counterclaimant ought to have brought evidence to show that Ugiokhuen did not exist as a ward and did not have a Plot Allotment Committee.

I have read the judgment of my very learned brother C. O. Idahosa C. J. (as he is now) and I agree that the judgment is not binding on me but merely persuasive. On this point I am not persuaded that the Ugiokhuen Plot Allotment

Committee was not a creation of the Oba of Benin and it had no right to allocate or recommend applications for approval by the Oba of Benin. The Defendant/Counterclaimant also pleaded and argued that the Claimant destroyed their poultry and well and killed 200 birds. Other than saying so in his evidence, Defendant did not really lead evidence in proof of this point.

There is evidence that the Claimant and her husband were arrested and charged to Court for malicious damage but it is also in evidence that they were discharged and acquitted. No direct evidence was led to show that the Claimant was responsible for the act of damage.

Learned Counsel for the Defendant/Counterclaimant tried to show that she was vicariously liable for the act of her sympathizers, even though, there is no evidence of any such act of sympathizers before this Court. The address of Learned Counsel is not a substitute for evidence of a fact.

I find that between the 2 competing claims of the Claimant and Defendant, the Defendant has a better title to the land in dispute. Moreso as both titles were traced to a grant by the Oba of Benin and the grant of the Defendant was first in time.

The claim of the Defendant Counterclaimant includes a claim for N1 million for trespass as general damages. From available evidence, Claimant is claiming the land is dispute which has been adjudged the Defendants. Her evidence is that she saw the poultry on the land and as a law abiding citizen went to report to the Police and to PW2. The evidence of the Defendant is that their poultry and other items were destroyed but he has not been able to prove or show that the Claimant

was the one who did the damage. I do not think that the Defendant is entitled to anything from the Claimant for the damage done.

The result of all the analysis above is that it is my view that the Claimant has failed to discharged the onus on her to prove her case. None of the reliefs are available to her and the claim is dismissed in its entirety.

I have considered the claim of the Defendant/Counterclaimant. I find that his approval is earlier in time to that of the Claimant.

2. He has shown his boundary neighbours both in evidence and litigation survey and they corroborate the evidence before the Court.
3. The Defendant has shown that he has been in possession right from the time of approval.

For the Defendant, I find that he has proved his claim in part on a balance of probability or prepondence of evidence. Accordingly judgment is entered in favour of the Defendant as follows:-

1. It is hereby declared that the Defendant is the person entitled to a Certificate of Occupancy or Statutory Right of occupancy over the piece or parcel of land measuring 100ft x 200ft approximately lying and situated at Ugbor Village Area, Ward 36A, Benin City and particularly delineated in red in the Defendant's litigation survey plan no. ISO/ED/035/2004 dated 16/7/04.
2. An order of perpetual injunction restraining the Claimant, her servants, agents, privies and assigns from further entering the said land adjudged to be that of the Defendant is hereby ordered.

Cost of N50,000 in favour of the Defendant.

**EFE IKPONMWONBA
JUDGE**

**A. B. THOMAS FOR THE CLAIMANT
A. A. OMORODION FOR THE DEFENDANT.**

