IN THE HIGH COURT OF JUSTICE, EDO STATE - NIGERIA

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP: HON. JUSTICE J.O. OKEAYA-INNEH, (JUDGE)

DELIVERED ON ..... THE ..... DAY OF JUNE 2016

BETWEEN:		**SUIT NO. B/760/2002**
MR. SUNDAY ARASOMWAN	**...**	CLAIMANT
AND		
MRS. ADEDOLAPO OSIFO.,		DEFENDANT

The Claimant filed this Writ of Summons on 3/12/2002 and by the Statement of Claim dated 3/12/2002 and by a Further 2nd Amended Statement of Claim dated 11/4/2014, the Claimant Claimed thus:-

"30. WHEREFORE THE CLAIMANT claims against the Defendant as follows:-

a) A declaration that the Claimant is the owner and person entitled to the grant of a Certificate of Occupancy to the parcel of land measuring 50ft by 100ft within a larger parcel of land measuring 400ft by 400.3ft demarcated by beacon nos MQ1382, MQ 1383,

MQ1384 and MQ1385 respectively, lying situate and in Ward 23/L Egua Edaiken Uselu Quarters, Benin City.

b) A declaration that the claimant as the owner of the parcel of land mentioned in prayer 1 above, possesses exclusive right over the said parcel of land and any act done or purported to be done by the Defendant which is inconsistent with the rights of the Claimant is null and void and of no legal effect whatsoever.

c) A declaration that whatsoever improvements were brought about by the unauthorised completion by the Defendant of the Claimantôs uncompleted building, situate at Ward 23/L, Egua Edaiken, Uselu Quarters, Benin City, now known as No. 3, Ofunmwegbe Street, Edaiken Quarters, Uselu, Benin City, constitute part of the building and land and are legally reposed in the claimant.

d) An Order of perpetual injunction restraining the Defendant, her agents, servants, or privies from asserting any ownership rights and interests or contesting in any manner whatsoever, the Claimantôs rights and interests of ownership of the said parcel of land mentioned in prayer 1 above.

e) General damages of N1,000,000.00 (One Million Naira) only for trespass.ò

The Defendant entered appearance by filing a Memorandum of Appearance on the 19/4/2013. The Defendant filed his Statement of Defence and a Further Amended Statement of Defence dated 31/3/2014.

Both parties filed all the relevant processes in line with the provisions of the Edo State High Court (Civil Procedure) Rules, 2012.

Claimant testified by stating that his name is Sunday Arasomwan. He lives in No. 10, Aiguokhian Street off Sakponba Road, Benin City, Edo State. He is a Businessman and knows the Defendant. He knows the land in dispute. He remembers making a written statement on Oath in respect of this matter. A copy of the Written Statement on Oath was shown to him. He identifies same and states that he wants to adopt the Written Statement on Oath as his evidence in Chief in respect of this matter.

The Claimants Written Statement on oath is reproduced hereunder:

CLAIMANT'S STATEMENT ON OATH

I, SUNDAY ARASOMWAN, Male, Christian, and Nigeria Citizen of No. 10,Aiguokhian Street, Off Sokponba Road, Benin City, Edo State, Nigeria dohereby depose on Oathand states as follows:

1. That I am the Claimant in this suit and I know the Defendant.
2. That I am a Businessman.
3. That I know the land in dispute.

4. That l am the owner of the land in dispute.
5. That the land in dispute is 50ft by 100ft and it is situate at Ward 23/L, Egua Edaiken, Uselu Quarters, Benin City.
6. That I bought the land from G. O. Aiwerioba for a valuable consideration. I rely on the Indenture dated 29/9/1987 between me and G. O. Aiwerioba as evidence of purchase receipt.
7. That G. O. Aiwerioba showed me the Obaôs Approval and it is with him as he sold only a portion to me.
8. That G. O. Aiwerioba who sold the land in dispute to me got the land from the Oba of Benin, Oba Akenzua ll through the Ward 23/L Egua Edaiken Plot Allotment Committee and was approved by the Oba.
9. That the entire parcel of land that the Oba of Benin approved for G. O.Aiwerioba is 400.5ft by 401ft x 400ft .3ft by 401 .3ft out of which he sold to me a portion of the parcel of land measuring 50ft x 100ft now in dispute.
10. That apart from the Obaôs approval, there was a Deed between the Oba of Benin, Oba Akenzua ll and G. O. Aiwerioba dated 11"óOctober, 1973 over the parcel of land mentioned in paragraph 9 measuring 400.5ft by 401ft by400.3ft by 401 .3ft. l rely on a Certified True Copy of the said Deed.
11. That immediately l bought the land, l began to exercise right of ownership over same.
12. That l commenced a building of six rooms on the land in dispute which l could not complete.
13. That l authorized my caretaker, one Madam Atiti Aiwerioba to take care of the land on my behalf as l was to be away for some time.
14. That l was subsequently informed by Madam Atiti Aiwerioba that the Defendant has trespassed unto the land by pulling down part of the six roomsôstructure thereon and started to lay claim of ownership over the land.
15. That l was amazingly terrified when on my visit to the land in dispute that l discovered the Defendant had completely demolished my uncompleted six rooms building and equally fenced same.
16. That the Defendant completed the construction while l was away despite the warnings from my caretaker.
17. That the Defendant has no title or interest in the land in dispute.
18. That as a result of the Defendantôs act of trespass on my land, I have suffered damages.
19. That I commissioned a licensed Surveyor to carry out a Litigation survey Plan on the land in 2011. l rely on the said Litigation Survey Plan No.SEA/ED/D130/2011.
20. That it is not true that the Defendant has been in possession of the land in dispute since 1977.
21. That it is not true that the Defendant completed her building in 1978 and parked into her house in 1986.
22. That it is not true before l bought the land in dispute, Defendant had completed her house thereon.

23. That there was no house on the land in dispute when I bought the land in dispute from G. O. Aiwerioba.
24. That I want the Court to give me judgment as per my paragraph 16 of my Further Amended Statement of Claim.
25. That I make this Statement on Oath believing the contents to be true and correct and in accordance with the Oaths Act.

DEPONENT

SIGNED 12/02/2013

In the course of testifying the Claimant tendered the following Documents

1) Certified True Copy of Amended Statement of Defence marked Exhibit ñAò

2) Certified True Copy of Statement of Defence marked Exhibit ñA1ò

3) Deed dated 29/9/1987 marked Exhibit ñCò

Claimant further stated that he wants the court to grant him all his reliefs. Under cross- Examination Claimant stated that he cannot remember when he had the right of ownership to the land. Claimant stated that he travelled to Lagos for about 3-4 years doing Business. He stated that he did not do a Survey of the land. He had no Building approval and that the Defendant trespassed on his land and pulled down this house. Claimant stated when he bought the land, the land was free and there was no building on the land. The Council in Uselu looked into the dispute of the land. Chief Ebose was head of the Council. The Council of Elders investigated the matter and came up with

the findings that the owner of the property sold the land to me and that I should go and take my land.

Client stated that the land is 50ft by 100ft. He does not know the size of the Defendantôs land. He does not know whether the land bought is all part of Engr. Aiweriobaôs land.

There was no Re-Examination.

CWI testified by stating that his name is Madam Atiti Aiwerioba. She lives at N0 23 Agho Street, Off Ekenwan Road, Benin City. She is a trader and remembers making a written Statement on oath which she thumbed printed on. A copy of the statement was shown to her. She identified same and states that she wants to adopt the statement as her evidence in chief before the Court in respect of this matter.

CLAIMANT'S WITNESS STATEMENT ON OATH

l, MADAM ATITI AIWERIOBA, Female, Traditionalist, Nigeria Citizen of No. 23,Agho Street, off Ekenwan Road, Benin City, Edo State, Nigeria do herebydepose on Oath and states as follows:

1. That l know the Claimant in this suit.
2. That l am a trader.
3. That l know the land in dispute measuring 50ft by 100ft situate at Ward 23/L, Egua-Edaiken, Uselu quarters, Benin City.
4. That the Claimant is the owner of the land in dispute.
5. That G. O. Aiwerioba sold the parcel of land measuring 50ft by 100ft to the Claimant.

6. That I was present when the parcel of land measuring 50ft by 100ft was sold to the Claimant by G. O. Aiwerioba.

7. That immediately the Claimant bought the land in dispute, he began to exercise right of ownership over same by erecting a building of six rooms which he could not complete.

8. That the Claimant authorized me as his caretaker to take care of the parcel of land on his behalf as he was to be away for some time.

9. That on my routine visit to the land, I discovered that the Defendant has trespassed unto the land measuring 50ft by 100ft by pulling down part of the six rooms building.

10. That upon discovery of the facts in paragraph 9 above, l informed the Claimant of the Defendantôs trespassory acts over the land in dispute.

11. That l warned the Defendant to stop her trespassory acts over the land in dispute but she refused and completed her building on the land.

12. That I make this Statement on Oath believing the contents to be true and correct and in accordance with the Oaths Act.

ILLITERATE JURAT:

SIGNED/THUMB PRINTED by the deponent (an //literate Person):

the contents of this Statement on Oath having been first read and interpreted to

her by OSHODIN DAVIDSON in Edo (Bini) language and when she appeared to

have perfectly understood and approved the contents affixed her right thumb

Under Cross-Examination.

CWI stated that she cannot write. She does not know the year Claimant bought the land. She is aware that a panel of Chiefs looked into the matter. She cannot remember how long ago but knows that her father sold land and put his thumb on the paper. She further states that any paper she wants to sign she puts her thumb print on the paper. She stated that the Claimant appointed her caretaker of the land for more then 20 years. She

does not know the defendant but got to know that the Defendant has trespassed on the Claimantôs land. She further states that all the land belongs to her father. She visited the land about a year ago when she heard that the Defendant trespassed on the land. CW1 stated that she has come to tell the whole truth. She reported that destruction on the land to the Claimant.

There was no Re-examinations.

CW2 testified by stating that his name is Henry Ediagbonya. He lives at No. 3, Alaghodaro Street, off 2nd West circular Road, Benin City, Edo State. He is a Registered Surveyor. He remembers making a written Statement in respect of this matter. A Copy of the Written Statement on Oath was shown to him. He identifies same and states that he wants to adopt the Written Statement on oath as his evidence in chief in respect of this matter.

SURVEYOR'S STATEMENT ON OATH

I, HENRY EDIAGBONYA, Male, Christian, Nigeria Citizen residing at No. 3,Alaghodaro Street, oft 2ndWest Circular Road, Benin City, Edo State do hereby depose on Oath and state as follows:

1. That my name is Henry Ediagbonya, I live at No. 3, Alaghodaro Street, off 2ndWest Circular Road, Benin City, Edo State.
2. That I am a Registered Surveyor with registration number 892.
3. That I obtained a B.sc Degree in Engineering from the University of Ibadan and a Postgraduate Diploma in Sun/eying from the University of Lagos as well as a Master Degree in Business Administration (MBA) from the University of Benin.

4. That I worked with the Ministry of Lands, Surveyor and Housing, Edo State as a Surveyor for 25years before I retired to set up my professional practice in1995.
5. That I know Claimant in this case.
6. That on the Litigation Survey Plan, verged Red (i.e. reference to plan No. 4)is the completed bungalow built by the Defendant on the Claimantôs land(now in dispute).
7. That in lVlay 2011, the Claimant commissioned me to prepare a Litigation Plan for him on the land in dispute at Ward 23/L, Egua-Edaiken Quarters, Benin City.
8. That l demanded to see his documents of his title over the land.
9. That the Claimant gave me the Registered Deed between the Oba of Benin, Oba Akenzua ll and Chief G. O. Aiwerioba, the Deed of Transfer between Chief G. O. Aiwerioba and the Claimant for a parcel of land measuring 50ftby 100ft.
10. That I followed the Claimant to the land and he took me round the boundaries and he identified the owners of the features on the land and the owner of the adjoining land/house to me.
11. That I took measurements of the land and the features and produced the litigation Survey Plan No. SEA/ED/D130/2011 of 20/05/2011 which l signed, sealed and delivered to the Claimant.
12. That on the litigation Survey Plan, verged green is the entire land of Chief G. O. Aiwerioba, verged red is the land measuring 50ft by 100fttransferred by Chief G. O. Aiwerioba to the Claimant, but now in dispute.
13. That also on the litigation Survey Plan, verged Blue is the land measuring100ft by 100ft including two completed bungalows by the Defendant.
14. That it is true that the parcel of land being claimed by the Defendant is within the land owned by Chief G. O. Aiwerioba.
15. That I make this Statement on Oath believing the contents to be true and correct and in accordance with the Oaths Law.

DEPONENT

SIGNED 12/02/2013

In course of his testimony, CW2 tendered the Litigation Survey Plan Number; No. SEA/ED/D.130/2011 dated 20/05/2011 marked exhibit ñDò

Under Cross-Examination:

CW2 stated that he visited the land in dispute. CW2 stated that the Defendant has a twin building in one enclosure. CW2 stated that he never saw the Defendantôs title documents. CW2 states that he knows the dimension of the land from his measurement. He further states from his measurement the two bungalows built by the defendants are on 100ft by 100ft piece of land out of which 50ft by 100ft belongs to the Claimant. CW2 stated that the Claimant showed him the document of land which included the registered deed between the Oba of Benin and Chief D. O. Aiwerioba. A deed of transfer between Chief Aiwerioba and Claimant for a piece of land measuring 50ft by 100ft. CW2 stated that the dimension off the land is 300ft by 400ft. CW2 further stated that there are co-ordinates in survey that tells them where a land is supposed to be. CW2 stated that when he used the co-ordinates, he found out that the land in dispute is within 300ft by 400ft.

There was no Re-Examination

The Defendant opened their case by calling one Chief Amenaghawon Iruorehe to testify. DW1 stated that he lives at No. 16 Eghaghe Street, Off Angbaro, Uselu Benin City. His Title is Agbonmoba of Benin Kingdom and remembers making a Written Statement on Oath in respect of this Suit. A

copy of the Written Statement on Oath was shown to him, he identified same and states that he wishes to adopt the Statement as his evidence in chief in respect of this matter

DEFENDANT'S WITNESS WRITTEN STATEMENT ON OATH

I, Chief Amenaghawon Iruorehe, Male, African Tradition Practitioner, Nigerian of No. 16, Eghaghe Street, Off Anigboro, Uselu, Benin City do hereby depose on Oath and state as follows:

1. That I- am a chief in the palace of the Oba of Benin with the title ñAgbonmoba of Benin Kingdomò and also one of the Community elders in Edaiken Quarters, Uselu, Benin City.
2. That my late father was the Oshodin of Edaiken Palace during the reign of Oba Akenzua II, C.M.G. and also was a member of the defunct Plot Allotment Committee, Ward 23/L, Egua Edaiken, Uselu, Benin City.
3. That I know as a fact that my late fatherôs said Plot Allotment Committee recommended to the Oba of Benin a grant of a large parcel of land situate at Edaiken Quarters measuring approximately 400feet by 400feet in favour of one Engineer G. O. Aiwerioba and the Oba of Benin approved the said recommendation of the said Plot Allotment Committee and thereby granted same to the said Engineer G.O. Aiwerioba in fee simple.
4. That the said Engineer G.O. Aiwerioba in turn sold portions of his above described parcel of land to various land developers who either developed their respective acquired portions or resold them to other persons.
5. That I know as a fact that the said Engineer G.O. Aiwerioba transferred a portion measuring approximately 190feet by 100feet to the late Felix I. Okunoghae who was the secretary of the above said Plot Allotment Committee.
6. That sometime in the year 2004, the Claimant herein with one Madam Atiti Aiwerioba summoned the Defendant before the council of Elders of Uselu and they alleged that the Defendant encroached upon the land of the Claimant measuring 50feet by 100feet.
7. That at the time of this summons, the Defendant has been living on the property physically for upwards of eight years and the said property was also fenced up,
8. That the council of Elders of Edaiken Quarters, Uselu, Benin City consequent upon the report of the Claimant as stated above mandated myself and one Umweni (now late) to see Engineer G.O. Aiwerioba to ascertain the true state of things concerning the land in dispute.
9. That the said council of Elders sent us to see the said G.O. Aiwerioba because both -parties to the dispute i.e. the parties herein traced their respective ultimate titles to the said G.O. Aiwerioba.

10. That the council of Elders also saw the documents of the parties and heard their witnesses as well as visited the property.
11. That I and the late Umweni indeed saw. Engineer G.O. Aiwerioba and he confirmed to us that in 1977, he sold a portion measuring 190feet by 100feet out of his above described parcel of land to Felix I. Okunoghae and the portion now in dispute before this Court which was also the subject of the summons before the said council of Elders is a part of the land Engineer G.O. Aiwerioba transferred to the late Felix I.O. Okunoghae.
12. That the said Engineer G.O. Aiwerioba also told us that his half sister, Madam Atiti Aiwerioba had no right to disturb the said Felix I. Okunoghae or his successors on the land.
13. That we reported our said findings to the said council of Elders who after consideration of the cases put forward by the respective parties and our report adjudged the Defendant as the owner of the subject matter of the dispute.
14. That after the council of Elders gave their decision as stated above, the Claimant and Madam Atiti Aiwerioba told the council of Elders that they are going to bring the said Engineer G.O. Aiwerioba before the Council and they left but till date they never returned to the council with Engineer Aiwerioba as they promised.
15. That in 2004 when the Claimant reported the matter before the council of Elders he did not say that the Defendant destroyed his building that was in progress but merely said that the Defendant took his land
16. That I make this deposition in good faith, conscientiously believing same to be true and correct to the best of my knowledge and in accordance with the provisions of the oaths law of Bendel State 1976 now applicable to Edo State.

The content of this deposition was read and

Interpreted in Edo (Bini) Language to the

Deponent by me Omos Ekeinde of No. 8

Ofunmwegbe Street and he seems to

perfectly understand and affirmed same

before affixing his right thumb impression

thereto.

Under Cross- Examination, DWI stated that he is a palace Chief and that the Beads on his neck was given to him by the Oba of Benin. He belongs

to the IBIWE Society in the palace. He was a member of the Edaiken Plot Allotment Committee. He knows how many plot of land was given Engr. Aiwerioba. The land is 400ft by 400ft. DW1 stated that he was one of those sent by the Elders to Aiwerioba to make enquires when a dispute arose about the land. DW1 stated that he knew when Aiwerioba gave land to Okunoghae which was about 1970. DW1 stated that he came to testify freely and that all he is saying in Court is the whole truth.

NO RE-EXAMINATION:

Defendant testified by stating that her name is Adedolapo Osifo. She lives at No. 80 Ofumwegbe Street, Edaiken Quarters, Uselu, Benin City. She remembers making a Written Statement on Oath in respect of this matter. A Copy of the Written Statement on Oath was shown to the Defendant. She identifies same and further states that she wants to adopt the statement as her evidence in chief in respect of this matter. In course of trial the following documents were tendered.

(1) Document dated 3rd day of October, 1977 admitted and marked as Exhibit **"E".**
(2) Document dated 10th day of October, 1977 admitted and marked as Exhibit **"F".**
(3) Copy of Affidavit dated 23rd day of February, 1983 admitted and marked as Exhibit **"G".**

Under Cross-Examination the Defendant stated that she cannot read nor write. She also stated that all the documents shown to her by her Lawyer she thumb printed on them. She cannot tell the difference between her thumb print and that of Chief. She stated that she does not know Felix Okunoghae and does not also know whether Okunoghae gave her papers from Aiwerioba. She stated that she bought the land in 1977 from Felix Okunoghae and does not know when Felix Okunoghae bought land from Oba of Benin. She could not recognize exhibit ñBò and cannot remember if Okunoghae gave her any Survey. She also does not know if the beacons numbers did not show in Aiweriobaôs Survey. She admitted that she surveyed the land. Exhibit ñFò was shown to Defendant who then stated that she does not know where the other documents are. Exhibit ñGò was shown to her and she stated that she has a building plan. She does not know when she built her house. She further stated that the land she built on was the one she bought from Okunoghae. She does not know if Okunoghae forged Aiweriobaôs signature. She also stated that she did not build on Claimantôs land.

Under Re Examination:

Defendant stated that there is no Judgment from any Court as regards this matter.

D. A. Uhunmwangho, learned Counsel for the Defendant in his adopted final written address formulated one issue for determination in this suit which is whether by the state of the pleadings before court and the evidence led, the claimant is entitled to the reliefs sought.

Arguing the lone issue as formulated, Learned Counsel submitted that the Edo State High Court (Civil Procedure) Rules 2012 regulates procedures in this Honourable Court. Counsel further stated that the defendantõs Further Amended Statement of Defence was filed on 31/3/2014 pursuant to the order of this Honourable Court made on 24/3/2014 and that the claimantõs 2nd Further Amended Statement of Claim dated the 10th day of April, 2014 and filed on 11/04/2014 was deemed properly filed and served on 24/6/14 pursuant to claimantõs application dated 12/6/14 and filed on 13/6/14 which application this Honourable Court granted on 24/ 6/ 2014.

Counsel noted that the claimant in his above stated pleading made copious references and responses to paragraphs in the Defendantõs Further Amended Statement of Defence and further that this infringes the rules of pleadings and the said paragraphs in claimantõs 2nd Further Amended Statement of Claim cannot be considered by this Honourable Court. Counsel referred Court to Order 15 Rule 1 (3) of the Rules of this Honourable Court which states as follows:

"A claimant shall within 14 days of service of the statement of defence and counter-claim if any, file his reply, if any, to such defence or defence to counter-claim .... "

Counsel contended that courts of law like umpires in a game, cannot go outside the rules of court and do things in the way they like. Counsel placed reliance for this proposition in the case of **BHOJSONS PLC V DANIEL - KALIO (2006) 5 NWLR (PT 973) 330 @ 355, PARA F.**

Counsel further submitted that a claimant who wishes to controvert an allegation raised in the statement of defence should file a reply for the purpose of answering that particular fact and argued that in a statement of claim, the defence should not be anticipated.

Counsel contended that the Claimant should not make reference to averments even in an amended statement of claim to averment in the statement of defence. Counsel referred court to the following cases:-

(a) **HONG v. FEDERAL MORTGAGE FINANCE LTD** (2001) FWLR (PT 62) 1898 @ Pp 1908 - 1909, PARAS H - D.

(b) **NNADI v. OKORO** (1998) 1 NWLR (PT 535) 573 @ Pp 593, PARA H; 594, PARAS B - F.

(c) **OPARA v. DOWELL SCHLUMBERGER (NIG) LTD & ANOR** (1995) 4 NWLR (PT 390) 440

(d) **AKUBUEZE V. NWAKUCHE** (1959) 4 FSC 262

It is Counselôs further submission that paragraphs 14, 15, 16, 17, 18, 19,

20, 21, 22, 23, 24, 25, 26 and 27 of the Claimantôs 2nd Further Amended Statement of Claim is incurably offensive to the rules of pleadings and should therefore be struck out by this Honourable Court. Counsel contended that they should be totally discountenanced and that if the Claimant wanted to respond to any issue raised by the defendant in her further Amended Statement of defence, he should have filed a reply to the said further amended statement of defence in line with the rules of court earlier referred to and the case law authorities.

It is Counselôs further submission that the facts in the Defendantôs further Amended Statement of Defence which the Claimant attempted to deny or controvert in paragraphs 14, 15, 16, 17,18 19, 20, 21, 22, 23,24,25, 26 and 27 of his 2nd Further Amended Statement of Claim having not been traversed as required by law as stated above is deemed admitted and no further proof of same is required of the Defendant. Counsel referred court to **SECTION 123 OF THE EVIDENCE ACT, 2011** and the case of **KUBOR V. DICKSON (2013) 4 NVVLR (PT1345) 534 @586, PARAS D-F**.

Counsel submitted that in civil cases issues are settled on pleadings and courts should not allow evidence to be given in respect of facts not pleaded and that if however, such evidence is inadvertently received, it is the duty of the trial judge to discountenance it as it goes to no issue. For material

facts to be admissible in evidence, they must be pleaded. Counsel referred court to the cases:-

a) **AMINU v. HASSAN** (2014) 5 NVVLR (PT 1400) 287 @ 306,PARAS C, E-H; Pp 321-322, PARAS H-B;

b) **MBANEFO v. MOLOKWU** (2014) 6 NVVLR (PT 1403) 377 @ 418 PARAS A - F;

c) **ANYAFULU v. MEKA** (2014) 7 NWLR (PT 1406) 396@ 421,PARAS C - D; F -G,

d) **ACCESS BANK PLC v. MUHAMMAD** (2014) 6 NVVLR (PT 1404) 613@ 625, PARAS D - E.

e) **KUBOR V DICKSON** (2013) 4 NVVLR (PT 1345) 534 @ 579, PARAS D-F

Flowing from the above, Counsel urged court to discountenance all the evidence contained in the claimantôs additional statement on oath filed on 11th April, 2014 and adopted in court on 27/10/2014 because they are not a product of pleaded facts. Counsel stated that the said additional statement on oath is therefore legally inadmissible and ought to be discountenanced by this court.

Counsel submitted that the claimant testified in this case on the 27th day of October, 2014 when he adopted his depositions and tendered some documents which were admitted in evidence as exhibits. Counsel stated that it is pertinent to point to the fact that the claimant in this case is literate and spoke English in court. He communicated directly with the court and

needed no interpreter. Counsel further submitted that it is very worrisome and indeed unbelievable that a claimant or witness as intelligent as the claimant herein will not remember the year he began to exercise right of ownership over the land he purports to own.

Counsel contended that under the heat and fire of cross examination, the claimant told court he does not remember the year he supposedly began to exercise the right of ownership over the land in dispute. Counsel also told court that he cannot remember the year he went to and returned from Lagos where he purportedly travelled to and which warranted his appointing a caretaker to look after the land for him.

Counsel noted that still under the fire and heat of cross-examination, the claimant told court that he cannot remember the year he purportedly bought the land in dispute. He further submitted that the claimant who will not remember the above stated material facts is not worthy of any credit or belief and that he evaded the answer to all these salient questions under cross- examination.

Counsel urged court to presume that the answers to these questions if given, would be prejudicial to the case of the claimant and referred court to the case of **ORIANWO V. OKENE (2002) 14 NWLR (PT 786) 156 @ Pp 187, PARAS B - D, G -H**. It is Counselôs further submission that the

claimant is not certain of many things in his evidence under cross-examination and that he is not a reliable witness and should not be believed by this Honourable Court. Counsel referred the court to the case of **PROSPECT TEXTILE MILLS (NIG) LTD V. IIVIPERIAL CHEMICAL INDUSTRIES PLC ENGLAND (1996) 6 NWLR (PT 457) 668 @ 687, PARA H.**

Counsel stated that what is more worrisome is the fact that pulling down a building that is supposedly owned by another man is primarily a malicious damage and crime and stated that the claimant alleged that the defendant pulled down the house he was constructing on the land and yet he never considered it necessary to lay such a report to the police for investigation and necessary prosecution. Counsel noted that the Claimant admitted under cross-examination that he knows the property of the defendant unlike the picture he painted and showed to this Honourable Court in paragraphs 9, 10 and 11 of his 2nd further Amended statement of claim.

Counsel stated that the fact elicited under cross-examination shows that the Defendant did not just come into the property in dispute but has been on the land before claimant allegedly came thereon.

Counsel submitted that the claimant in the said paragraphs 9 and 10 of his said pleadings stated that he shall rely on photographs and negatives to

show to court the supposed destruction of his imaginary property by the defendant and that Claimant never tendered any photograph during the trial. Counsel stated that the inference this court draw from claimantôs omission or failure to tender the said photographs is that they do not exist as pleaded hence he abandoned the said crucial fact.

Counsel submitted that Claimant even further admitted against his own interest under cross-examination that he knows the property of the Defendant and when the claimant was told that the Defendant had been on the property since 1978, Claimant responded by saying that when he (Claimant) bought the land, the land was free but still under cross-examination, when the claimant was told that the Defendant moved into the property in 1986, he stated thus ñthere was nobody in the buildingò

It was Counselôs contention that the question that should bother any reasonable person is which building did the claimant say there was nobody? Who built or owned the said building?

Counsel argued that this is an admission against his interest to the fact that the defendantôs house was already there before claimant allegedly came into the land. Counsel referred court to **ODI V. IYALA (2004) 8 NWLR (PT875) 283@ 308 PARAS D-E**

Counsel stated that under cross examination, the Claimant claimed that he has boundary with the defendant but he does not know the size of defendantôs land. He also stated that he does not know whether the defendantôs land and the claimantôs alleged land are part of Engr. Aiwerioboôs land. Counsel noted that all these show the slippery and inconsistent nature of the claimant who is also not worthy of any credit whatsoever.

Counsel submitted that CW1 is not worthy of any belief or credit who the claimant allegedly engaged to look after his supposed piece of land for him. Under cross examination, Counsel stated that this witness confessed she does not know the year the supposed land was bought or sold. She also stated that her father sold the land and the father as the seller put his thumb on the paper. Counsel stated that the document CW1 was referring to was exhibit ñCò i.e. the purported indenture made between Engr. Aiwerioba and the claimant. Counsel noted that a close look at exhibit ñCô will show that the supposed seller of the land did not thumb print the document.

Counsel also stated that CW1 also admitted she visited the land about a year ago and when asked if the defendantôs land was fenced she answered that the land, is her fatherôs. She also does not know the boundary men to

the land. She also does not know the year the alleged destruction of claimantôs purported property took place. Worse still she could not say whether the matter was already in court by the time the alleged destruction of claimantôs building took place. Counsel maintained that all these show that CW1 witness is suborned and she is not a witness of truth. Counsel stated that this witness should not be believed by court and referred court to the case of **YUSUF v. OBASANJO (2005) 18 NWLR (PT956) 96 @ 166 PARAS B - C P 167, PARAB.**

Counsel contented that this same witness who was the supposed caretaker appointed by the Claimant to look after his imaginary land on his behalf stated in her evidence in chief as per paragraph 9 of her deposition thus:-

> ñThat on my routine visit to the land, I discovered that the Defendant has trespassed unto the land measuring 50ft by 100ft by pulling down part of the six rooms buildingò

However, when asked under cross examination if she knows the Defendantôs land, she answered thus:

> **ñI don't know her land. All the land belongs to my father. I later heard that Defendant trespassed on the land".**

Counsel submitted that this witnessô testimony in chief and that elicited under cross examination are materially inconsistent. Under examination in

chief, she stated that she discovered the alleged trespass but under cross examination, she said she later heard that the Defendant trespassed on the land. Counsel further submitted that the question before this court now is which of these versions of testimony will the court believe?

Counsel contended that it is trite that no court of law has the jurisdiction to pick and choose which evidence to believe between two materially contradictory evidence of a witness and urged court not to believe the testimony of CW1 and to discountenance same in its entirety.

Counsel submitted that like the Claimant and his first witness, CW2 is not a witness worthy of belief as it can be seen from the totality of his evidence that he came to court to serve a purpose other than to assist the court to do justice

Counsel stated that CW2 in his examination in chief as per paragraph 9 of his deposition told this court thus:

> **"That I followed the Claimant to the land and he took me round the boundaries and he identified the owners of the land and the owner of the adjoining land/house to me"**

Counsel stated that under cross-examination, CW2 beat a retreat and stated thus:

> **"He (Claimant) only identified the two bungalows built by the Defendant. I did not find it necessary to identify the boundary men at the back side. We did not find it necessary to find out who the owners of the properties on the other side of Defendant's property was".**

Counsel submitted that the Witness also told court as per paragraph 8 of his statement on oath that the Claimant gave him the Registered Deed between the Oba of Benin and Chief G. O. Aiwerioba and the Deed of Transfer between Chief G. O. Aiwerioba and the Claimant for a parcel of land measuring 50ft by 100ft.

Counsel also stated that this witness also affirmed the above said fact under cross-examination but stated emphatically that the dimension of Chief Aiweriobaôs land was 91.51 meters which he further interpreted to be 300.23ft by 400.98ft

Counsel stated that Claimant tendered exhibit B in this suit which is the registered deed between the Oba of Benin and Chief Aiwerioba. The registered Deed which CW2 told court the Claimant showed to him before or while he was purportedly carrying out his assignment was not tendered before Court. Counsel noted that CW2 spoke as a professional and was very emphatic that the land in dispute is within a larger parcel of land measuring 300ft by 400ft and not 400 feet by 400feet as shown in Exhibit ñBò tendered by the Claimant.

Counsel urged court to hold that this discrepancy is material and it should leave a doubt in the mind of every reasonable arbiter. It shows the desperation of the Claimant to have what is not his and in this quest, his

proficiency in concocting documents. Counsel further urged court to hold that if the Claimant and or CW2 had produced the said registered deed of Chief G. O. Aiwerioba covering a parcel of land measuring 300ft by 400ft, which was the document the Claimant showed to the CW2, the said document would not have been in Claimantôs favour. Counsel relied on Section 167(d) Evidence Act, 2011. This is more so as CW2 never identified Exhibit B in court as the document showed to him by the Claimant while he was to prepare Exhibit D.

Counsel argued that CW2 still under cross examination tried to deceive this Honourable Court when he stated as follows:-

> **"In Survey, we have co-ordinates which tells you where a land is supposed to be. I found out the area of Defendant's land fell in the area in dispute".**

It was Counselôs submission that this court takes a close look at Exhibit C which is the purported indenture made between the said Chief G. O. Aiwerioba and the Claimant, the court will find that it was never stated what part of the larger parcel of land the one purportedly given to the Claimant was exorcised from. Exhibit C only stated that

> **"The Transferor is the owner of a piece or parcel of land measuring 400.5 feet by 401.0 feet by 400.3 feet by 401-3 feet. The Grantee, now Transferor, has agreed to transfer a portion of**

50ft by 100ft out of the total measuring to the Transferee on consideration of N1,600.00 ..... ”

Counsel argued that it is not clear from the said document which portion of the larger land was purportedly sold to the Claimant and that this cannot also be assumed as CW2 only tried to fool this Honourable court. Counsel stated that there is nothing on exhibit C to show what portion of the said larger parcel of land was purportedly transferred to the Claimant.

Counsel noted that CW2 even admitted under cross examination that he did not see the Defendantôs title document in the course of his work and submitted that all of the above show that the CW2 came to court to satisfy other purposes other than to tell the truth and assist the court to do justice.

It is Counselôs further submission that it is trite law that the Claimant must only succeed on the strength of his case and nothing more or less and stated further that the Claimant having woefully failed to discharge the onus placed on him by law does not deserve the judgment of this court at all.

Counsel urged Court to accept the testimony of DW1 as the truth as same is credible and uncontroverted. Counsel stated that amongst the things, this witness told court was that the claimant summoned the Defendant before the Council of Elders in Uselu in 2004 and he was one of the persons sent by the council to enquire from Engr. Aiwerioba about the land

in dispute and the said Engr. Aiwerioba confirmed that he sold the portion of his land now in dispute to the defendantôs predecessor-in-title.

Counsel stated that DW1 also told court that when the claimant summoned the defendant before the said council of Elders, he never told the council that the defendant destroyed his house under construction but that he only complained that Defendant encroached upon his land. This piece of evidence was not disturbed howsoever under cross-examination. This again shows the desperation of the claimant to reap where he did not sow by deceiving this Honourable Court.

Counsel noted that the question that readily comes to mind is if the defendant truly destroyed claimantôs house under construction at that time or at any other time for that matter, why did the claimant not make it a part of his complaint to the council of Elders?

DW1 also told court that as at the time the claimant summoned the defendant before the council of Elders at Uselu, the defendant has been living in her property physically for upwards of eight years and that defendantôs property was also fenced up at that time. The claimant did not under cross-examination disturb this piece of evidence howsoever. Counsel urged court to give effect to this crucial fact which the Claimant is deemed to have admitted by not controverting same in any manner. This

piece of evidence again shows that defendant has been in physical occupation/ possession of the land in dispute before the claimantôs purported purchase of a part of the land.

Counsel argued that assuming but certainly not conceding that Engr. Aiwerioba sold the land in dispute to the claimant, the claimant did not actually get anything from the said Engr. Aiwerioba because no one can give what he does not have. The said Engr. Aiwerioba has long before that time sold the land to Felix I. Okunoghae who in turn sold same to the defendant. So, Engr. Aiwerioba could not have validly sold to the claimant what he had already sold to someone else. He had no title to pass to the claimant.

Counsel submitted that exhibits ó Eô, óFôand óGôclearly show the Defendant has been in effective possession of the land in dispute.

Counsel submitted that in a case like this, the claimant will only succeed on the strength of his case and nothing more. The case of the claimant reveal unexplained inconsistencies and great desperation. The claimant by his pleadings and evidence has woefully failed to discharge the burden placed on him by law and urged court to dismiss this case with substantial cost.

O. A. Lawani, learned Counsel for the Claimant formulated one issue for determination in this suit which is ñWhether the Claimant has proved his case on the preponderance of evidence as to entitle him to Judgment?

Arguing the lone issue as formulated, Counsel submitted that the Claimant has proved his case on the preponderance of evidence as to entitle him to judgment in this Suit.

Counsel submitted that there are five (5) ways of proving title to land in Nigeria and referred court to the Supreme Court case of **NWOKORO ROBIA V. NWOGU** (2009) 10 NWLR, PART 1150, PAGE 553 AT PAGE 556 RATIO 1.

Counsel submitted that the Claimant is not bound to prove all the five ways and that it suffices if he can prove one of these ways. Counsel stated that in the instant case, the Claimant gave evidence that he acquired the land in dispute from G.O. Aiwerioba and tendered Exhibits B and C.

Counsel stated that these two documents were not challenged or shaken under cross examination and they are reliable, consistent and uncontradicted. Counsel further submitted that by the tendering of Exhibits B and C coupled with the cogent and reliable evidence of the Claimant as ably corroborated by CW1 and CW2, Claimant has proved title to the land

in dispute. The tendering of Exhibits B and C, Counsel submitted is one of the ways of proving title to land in Nigeria i.e. production of title documents.

Counsel argued that Claimant did not only prove his title, he equally proved the title of his predecessor, G.O. Aiwerioba, who sold the land in dispute to him, the entire land he got was 400.5ft by 401.0ft by 400.311 by 401.3ft but he sold 50ft by 100ft to the Claimant which is in dispute in this Suit. By this, Counsel further argued that the Claimant has discharged the burden placed on him by law which says that in a declaration for title to land, the Claimant must only prove his title but he must also prove the title of his predecessors.

On the issue of damages, Counsel submitted that the Defendant having been warned of her tresspassory acts and she refused to stop, she should bear the consequences of her action. Counsel stated that CW1 gave uncontroverted evidence that she warned the Defendant of her tresspassory acts but refused to stop. This was corroborated by CW2 and tendered Exhibit i.e. Litigation Survey.

Counsel contended that in law, damages for trespass are awarded for the fact of interference with the Claimantôs possession where established and the Claimant needs not prove any specific damage in particular, it being sufficient that interference has been shown. Counsel referred court to the

Supreme Court case of **ANYANWU V. UZOWUAKA (2009) 13 NWLR, PART 1159, PAGE 445, RATIOS 3 AND 6**.

Counsel submitted that Defence Counsel made heavy weather about Claimantôs 2"° Further Amended Statement of Claim in that they were said to be against the rules of Court as regard pleadings. Counsel further submitted that Claimantôs 2nd Further Amended Statement of Claim in a nutshell are a reaction to Defendantôs Further Amended Statement of Defence particularly paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16. The said paragraphs brings to the notice of the Court that the Defendant did not get her purported land from G.O. Aiwerioba, the said paragraphs are not scandalous and vexatious but facts meant for the Court to be able to decide the issues in controversy between the parties.

Counsel further contended that where the Defendant did not counterclaim in his Statement of Defence, the Claimant is not mandated to file a Reply in order to deny allegations in the Statement of Defence. Counsel referred court to the case of **ABDULLAHI V. GOVEMOR OF KANO STATE (2014) 16 NWLR (PT 1433) 213 AT PAGES 247 -248 PARAS G-A RATIO 7** where the court held:-

“the rule of practice is that where no counterclaim is filed, a reply is generally unnecessary if its sole object is to deny allegations contained in the Statement of Defence”.

Counsel further referred court to the Supreme Court in an earlier case of Alao v. ACB Ltd (1998) 3 NWLR (pt 542) 339 at pages 369-370 paras H-A Ratio 14 held in clear terms:

“as in the present case no counterclaim was filed, further pleadings by way of a reply to a Statement of Defence is generally unnecessary, if the sole purpose is to deny the averments contained in the Defendant’s Statement of Defence”

It is Counselõs further submission that the Claimant joined issues properly with the Defendant by the amendment of his Statement of Claim and in the absence of a counterclaim is not bound to file a reply as incorrectly alleged by the Defendantõs Counsel in his address.

Counsel further submitted that assuming without conceding there is an irregularity on the part of the Claimant for not filing a Reply, it would only amount to a mere irregularly and since the Defendant have taken steps in the proceedings without raising it or complaining of it, she is deemed to have waived it and can no longer turn round and complain of it especially where she cannot point to any injury occasioned thereby.

Counsel referred Court to Order 5 Rule 2 of the Edo State High Court (Civil Procedure) Rules 2012 and noted that the Defence Counsel did not oppose the Motion on Notice dated 12/6/2014, which deemed the pleadings as properly filed and served. Counsel contended that the Defence Counsel also participated in the trial of this Suit throughout the proceedings, he did not raise objection to these paragraphs, and he did not apply that they be struck out for being against the rules of Court and pleadings. Counsel stated that the Defence was aware of the alleged non-compliance with rules but did not act timeously.

Counsel further submitted that where a party is aware of non-compliance with applicable rules of Court, such a party is duty bound to act timeously thereon and before taking any further step in the proceeding, otherwise such a party will be roped in by the doctrine of waiver and will be deemed to have waived his right. My Lord we submit that in the instant case, the Defence Counsel has waived his right because he did not act timeously, equity aids the vigilant and not the indolent. Counsel referred to the case of case of **SHUAIBU V. MUAZU (2014) 8 NWLR, PART 1409, PAGE 207 AT 223 RATIO 5**.

It is Counselôs further submission that Rules of Court are not intended to be applied slavishly and that a Court will prefer to do Justice rather than

injustice on account of slavish adherence to the rules of Court. Counsel referred Court refer to the Supreme Court case of **PDP v. I.N.E.C. (2012) 7 NWLR part 1300, page 538 at 545 ratios 7 and 8**.

Counsel argued that the Defence Counselôs contention that the aforementioned paragraphs should be struck out and discountenanced for alleged non-compliance with the rules of Court amounts to technical justice which Court have since abandoned in preference to substantial justice as held by the Supreme Court in the case of **STOWE V. BENSTOWE (2012) 9 NWLR PART 1306, PAGE 450 AT 454 RATIO 6**.

Counsel also maintained that where there is an alleged non-compliance, with the rules of Court, the same rules are to be used by the Court to discover justice and not to choke, throttle or asphyxiate justice. Counsel referred court to the case of **EVONG V. MESSRS OBONO, OBONO & ASSOCIATES (2012) 6 NWLR, PT 1296, PAGE 388 AT 392 RATIO 4.**

Counsel stated that the authority of **HONG V. FEDERAL MORTGAGE FINANCE LTD (SUPRA)** cited by Defence Counsel is not relevant to his case because that authority borders on amendment of pleadings by parties.

Counsel submitted that the Further Amended Statement of Defence of the Defendant has been sufficiently traversed and controverted by the Claimant in paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of Claimantôs 2nd Further Amended Statement of Claim.

Counsel further stated that the case of **KUBOR V. DICKSON (supra)** and **Section 123 of the Evidence Act, 2011** is not applicable in this case and urged court to disregard same.

Counsel stated that the aforementioned paragraphs were pleaded and evidence have been given without objection from the Defence Counsel and further submitted that the averments in the said paragraphs and Claimantôs additional statement on Oath adopted in Court on 27/10/2014 are properly before Court and have fully canvassed issues as between the parties.

Counsel stated that the Defence Counsel made heavy weather about the Claimantôs not remembering some specifics when asked under cross examination and stated that this does not go to his credibility since the information is in the document with which he acquired and as the Exhibit ñCò speaks for itself, whatever answer the Claimant gives cannot change the year on Exhibit ñCò as oral evidence cannot override documentary evidence.

Counsel further submitted that the Claimant in paragraphs 11 and 12 of his Statement on oath filed on 12th February, 2013 stated that immediately he bought the land, he began to exercise rights of ownership over same, further that he commenced a building of six rooms on the land in dispute. Counsel argued that the fact that Claimant could not remember specific dates does not mean that specific events did not take place. Counsel noted that as the Claimant may have forgotten, there is no evidence from the Defence that the Claimant never did all these things and stated that the Claimant is worthy of credit, belief and reliable as his demeanour in Court is one over which the Court would have formed an opinion as a truthful witness.

Counsel stated that it is pertinent to note that the Claimant under cross examination told this Honourable Court that he did not report the destruction of his building by the Defendant to the Police because the matter was already in Court and that the Claimant had a choice to either report to the Police or take the matter to Court and he choose the Court option, moreso when he knows that the Police cannot pronounce on the ownership of the land in dispute, the Claimant was more interested in getting his property back than send the Defendant to jail. My Lord, we

submit that there is nothing incredulous in the Claimant not reporting to the Police.

Counsel submitted that the non-tendering of the photographs does not mean that it did not take place especially when the said destruction was corroborated by CW1 who was not shaken under cross examination. The Claimant we submit is not an incorrigible liar but rather the Defendant who does not know her land if she has any.

Counsel submitted that there is no admission against his interest by Claimant as he never stated anywhere in his evidence in chief or under cross examination that the Defendants house was already there before Claimant came to the land but rather he has consistently maintained that the Defendant destroyed his building, hurriedly erected the purported building, while this Suit was already pending, Claimant told Court under cross examination that when he bought the land in dispute, it was free.

Counsel stated that the fact that CW1 said she does not know the year the land was bought is immaterial moreso, when Exhibit C is before Court and same speaks for itself.

Counsel submitted that the law does not insist on verbatim exactitude when witnesses give evidence on the same subject matter. Counsel stated that if

witnesses give evidence on the same subject matter or event to the exact minutest details, a trial Court should seriously suspect such evidence, thus, where there are immaterial differences here and there, that itself shows their truthful testimonies. Counsel referred to the Supreme Court case of **OWIE V. LGHIWI (2005) 5 NWLR, PART 917, PAGE 184 AT 193 RATIO 10**. Counsel urged court to disregard the submission of Defence Counsel.

Counsel submitted that Exhibit ñDò is unchallenged and uncontroverted because the Defendant did not produce any Litigation Survey, she is therefore bound by Exhibit ñDò. It is Counselôs further submission that the address of Counsel cannot take the place of evidence and oral evidence cannot be used to contradict documentary evidence.

Counsel noted that it is to be noted that CW2 is an expert witness who knows what to do to carry out his job professionally and further noted that if the Claimant took him round the boundaries and identified owners, it is left for CW2 to use his professional expertise to include it in his findings. Counsel submitted that CW2 did not find it necessary to find out the owners of the properties on the other side of Defendantôs purported property and the Defendantôs Counsel cannot question the professional judgment of the CW2.

It is Counselôs further submission that the registered deed which CW2 was given by the Claimant to carry out his assignment is Exhibit ñBò and that it is not true that it was not tendered. Counsel argued that CW2 never told Court that he was given a deed covering 300ft by 400ft and that the purported deed covering 300ft by 400ft exists only in the imagination of the Defendant as Exhibit ñBòspeaks for itself.

Counsel stated that it should also be noted that the entire land is not in dispute but only 50ft by 100ft which has been sufficiently identified in Exhibit ñDò the Litigation Survey Plan produced by CW2. Counsel further stated that what the Court should concern itself with is the land in dispute and not the one not in dispute.

Counsel submitted that the dimension of land mentioned in paragraph 4 of Exhibit C was excised from the dimension of the land mentioned in paragraph 3 of Exhibit C and that it is very clear from Exhibit ñCòthe portion of the larger parcel of land sold to the Claimant by G.O. Aiwerioba. Counsel stated that the submission of the Defence Counsel is misplaced and frivolous and urged court to discontinuance same.

Counsel further submitted that CW2 does not need to see the Defendantôs title documents to carry out his assignment and that the evidence of CW2 remains unchallenged and uncontroverted.

Counsel contended that this case ought to turn on the quality of title documents possessed by the respective parties and that while it is true that a Claimant would succeed on the strength of the case, the Claimantôs case becomes stronger when there is nothing properly so called on the other side of the imaginary scale.

Counsel argued that the case of the Defendant put side by side with that of the Claimant is not credible as the Defendantôs case is unreliable and riddled with contradictions. Counsel further stated that the documentary evidence of the Defendant is at variance with her pleadings and submitted further that the Defendant not to be believed by this Court since she is a desperate land speculator wanting to reap where she has not sown.

Counsel argued that Exhibits A and A1 shows the desperation of the Defendant. Counsel submitted that assuming but not conceding that the Defendant got her purported land from Chief G.O. Aiwerioba, as at the time one Felix I. Okunoghae purportedly bought the land in dispute from G.O. Aiwerioba on 3rd October, 1977 which he later sold a part to the Defendant on 10th October, 1977, the said G.O. Aiwerioba was in Prison custody in Lagos as he was arrested by the Federal Government of Nigeria in October 1975 and released in December, 1977. This evidence is contained in paragraphs 14-16 of the Claimantôs 2nd Further Amended Statement of

Claim and paragraph 10 of the Claimant Additional Statement on Oath dated 11/4/2014 and adopted on 27/10/2014. Counsel contended that this evidence is unchallenged and uncontroverted and urged court to so hold.

Counsel further submitted therefore that the title documents of the Defendant especially Exhibit ôEô i.e. the Agreement between G.O. Aiwerioba and Felix I. Okunoghae is a forgery and argued further that it is therefore not a surprise to see that the signature of G.O. Aiwerioba in Exhibit C is different from the purported signature of G.O. Aiwerioba in Exhibit E. Counsel urged court to take a close look at the two signatures utilizing the Courtôs authority derivable from Section 101(1) of the Evidence Act 2011 and the Court will see that there is a difference. Counsel urged court not to place probative value on Exhibits E and F and should disregard them from the evidence because they are products of forgery.

Counsel referred court to paragraphs 5 of Exhibit A, where the Defendant said that she completed the building on the land in dispute in 1978 and also restated this in paragraph 5 of Exhibit A1

Counsel further submitted that the demeanour of the DW1 in the witness box was that of a man who does not know anything about the land in dispute, a suborned witness who was evasive in answering questions put to him. Counsel urged court to hold that the Defendant and his witness are

not truthful witnesses who should be believed by this Honourable Court and further submitted that on the balance, the Claimantôs case is more coherent and persuasive and that the imaginary scale of justice in this case tilts in favour of the Claimant in whose favour judgment should be given.

Replying on points of law, Defendantôs Counsel stated that the Claimant in a futile attempt to undercut and/or derogate from the settled position of the law as submitted in the Defendantôs final address as to the unsustainability of the Claimantôs case arising from his failure to file a reply to the Defendantôs Further Amended Statement of Defence submitted that where no counter claim is filed by the Defendant, the Claimant need not file a reply to the Statement of Defence.

On this score, Counsel submitted that those cases cited by the Claimant stated above do not in any way help Claimantôs case. Counsel submitted that cases are not to be cited at large. The facts of the case must be similar. Counsel referred court to the case of **Oyeneyin v. Akinkugbe (2010) ALL FVVLR (Pt. 517) 597 @ Pp 614 - 615, Paras G - A**.

Counsel argued that the major consideration in the case of **ABDULLAHI V. GOVERNOR OF KANO STATE** (Supra) was the operation of the doctrine of severance of pleadings as the court of Appeal in that case stated at page 247, para H of the judgment as follows:-

‘A reply may, however, be filed to show facts which will make the defence untenable for example where the Defence has pleaded statute of limitation or defence of confession and avoidance”.

Counsel further referred court to page 248, para B of the said report, where the court further stated thus:

“The proper function of a reply is to raise in answer to the Defence, any matter which must be specifically pleaded which make the Defence not maintainable .... ”

On the authority of **ALAO V. A.C.B LTD** (Supra) as cited by Claimant’s Counsel, Defendant’s Counsel submitted that what the Supreme Court considered in the main in that case was the enforceability or effect of an illegal contract. Counsel stated that the facts of that case are very dissimilar to the facts of this case at hand.

Counsel quoted Iguh JSC (as he then was) at page 370, para B of the said report stated as follows:-

“where, however, because of the nature of the averments in the statement of defence filed, the Plaintiff proposes to lead evidence in rebuttal or to set up some affirmative case of his own in answer to the facts alleged by the Defendant or raise issues of fact not arising out of the previous pleadings, the Plaintiff, as a matter of prudence and general practice shall put in a reply”.,

Counsel referred court to the Supreme Court in **Ogolo v. Fubara** (2003) 11 NWLR (Pt. 831) 231 @ Pp 265 - 266, Paras H - A where it stated that

where new issues are raised in the statement of Defence, the plaintiff is expected to file a reply thereto.

Counsel stated that the position of the Defendant is that a statement of claim cannot and should not anticipate the defence and restated the position of the law that when pleadings are amended, they date back i.e. the effect, to the day the original or first pleading was filed; Therefore, in the eyes of the law, when the Claimantôs 2nd Further Amended Statement of Claim was deemed properly filed and served by the order of court, it took the place of and dates back to the date the original statement of claim was filed. It is obvious and needless to say that at that time, the statement of defence had not been filed and as such, the Claimant could not have been referring or referred to any fact in the statement of Defence.

It is Counselôs further submission that the operative word in **Order 15 Rule 1 (3)** is ñSHALLò and it has been held in a plethora of cases that when the Word ñShallò is used in a statute, it means it is mandatory for the Claimant to file a reply to statement of defence, if any.

Counsel maintained that rules of court are not made for fun, but to be obeyed. Counsel referred court to **A.S.T.C V. QUORUM CONSTORTIUM LTD (2009) 9 NVVLR (PT. 1145) 1 @ 29, PARAS D - F.**

Counsel contended that the import of Claimantôs failure to file a reply to the Statement of Defence is that he is deemed to have admitted the averments in the statement of Defence. **IWUOHA V. NIPOST LTD** (2003) 8 NWLR (Pt.822) 308 @ Pp 340, Para H; 341 Para H.

Counsel argued that the provision of **Order 5 Rule 2** of the rules of this court does not apply to the facts of this case as the Claimant wants this Honourable Court to believe and that all the cases cited by the Claimant on this score are inapplicable to the facts of this case and ought to be discountenanced by this Honourable Court.

On the issue of the Defendant not raising any objection to Claimants irredeemably bad pleadings and as such occasioning a waiver, Counsel contended that it is not a personal right accruing to the Defendant which she can wittingly or unwittingly waive or surrender. It is a matter of law which cannot be compromised or ignored by anyone or with or without the consent of any party.

Counsel submitted that the argument of the Claimant in this regard is a tacit admission of the futility of his attempts as stated in those paragraphs of his 2nd Further Amended Statement of Claim and the evidence purportedly led on them vide his additional statement on Oath.

Counsel submitted that the Claimant made heavy whether of Exhibits óAôan óA1ôand further submitted that those exhibits are mere pleadings which did not produce any judgment or order of court. Counsel argued that they bear no evidentiary weigh whatsoever

Counsel submitted that the law is that the Claimant is to succeed on the strength of his case and nothing more and finally submitted that on the whole the Claimant has woefully and irredeemably failed to prove his case as required by law and consequently, the suit ought to be dismissed in its entirety with substantial cost.

I have carefully considered this suit, the evidence led and the written addresses of both learned counsel. I must commend their painstaking efforts in putting across their arguments in this suit. I now turn to the issues as formulated by both learned counsel which essentially is the same and I will proceed to answer the questions posed therein by both counsel.

A long line of authorities have settled that in a case where both parties claim title to land, the court is more concerned with the relative strength of the party with better right who must be given the declaration. It is also elementary to restate that for the plaintiff to succeed, he must rely on the strength of his own case and not on the weakness of the defence, except,

however, where such evidence of the defence manifestly supports the case of the plaintiff.

The legal position is also well established wherein a plaintiff in seeking title to land has the onus to show how he or his predecessor in title has acquired such.

It is well settled in our legal system that proof of title must be established through one of the five ways as laid down in the case of **IDUNDUN VS. OKUMAGBA (1976) 9 - 10 SC.223** which are as follows:-

1. By traditional history or evidence or;
2 By documents of title;
3. By various acts of ownership, numerous and positive and extending over a length of time as to warrant the inference of ownership
4. By acts of long enjoyment and possession of the land and;
5. By proof of possession of adjacent land in circumstances which renders it probable that the owner of such adjacent land would in addition be the owner of the land in dispute.

The burden placed on the plaintiff is to prove at least one of the five ways and not conjunctively. The same principle was also applied in the cases of **MOGAJI V. CADBURY LTD**. (1985) 2 NWLR (Pt.7) p.373, **ALLI V. ALESINLOYE** (2000) 6 NWLR (pt.40) p.117, **OLOHUNDE V. ADEYOJU** (2000) 10 NWLR (Pt.676) p, 562 and **ADESANYA V. ADEROUNMU**

(2000) 9 NWLR (Pt.672) 370; **ISEOGUBEKU V. ADELARUN 92013) 2 NWLR 9PT 1337) 140 AT 164 PARA F - H**

Before I proceed, I must first address the issue raised by learned Counsel for the Defendant where counsel noted that the Claimant ought to have filed a reply by way of response to Defendantôs Further Amended Statement of Defence. Defendant is essentially saying that having not filed a reply, Claimantôs 2nd Further Amended Statement of Claim cannot be considered by this court. Learned Counsel for the Defendant also anchored is objection on the provisions of the Rules of this court, specifically **ORDER 15 RULE 1(3)** which states that a Claimant shall within 14 days of service of the Statement of Defence and Counter-Claim if any, file his reply, if any, to such defence or defence to counter claim. I think the Claimantôs Counsel correctly stated the position of the law by virtue of the authority of **ALAO V ACB LTD** (supra) which for emphasis I will quote once more:-

> **"as in the present case no counterclaim was filed, further pleadings by way of a reply to a Statement of Defence is generally unnecessary, if the sole purpose is to deny the averments contained in the Defendant's Statement of Defence"**

In any event, the objection should have been raised earlier and timeously. I therefore hold that the averments and pleadings contained in the said 2nd

Further Amended Statement of Claim were properly received. Now, it is well settled principle of law is that in a claim for declaration of title to land, the plaintiff has to succeed on the strength of his own case and not on the weakness of the defence. The age long principle in land matters is that the onus is on a plaintiff who claims declaration of title to land to satisfy the court that he is entitled on the evidence adduced by him to the declaration sought. Where however, evidence from the defendant supports the case of the plaintiff he is entitled to rely on it. This was the principle in **AKINOLA V. OLUWO** *(1962) 1 SCNLR 352;* **KODILINYE V. ODU** *(1935) 2 WACA 336;* **OMONI V. TOM** *(1991) 6 NWLR (Pt. 195) 93;* **OBIASO v. OKOYE** *(1989) 2 NWLR (Pt. 119) 80.*

It is also the law that in an action for declaration of title to land, if a party predicates his title on sale or grant by a particular person, family or community he is under a duty to plead and prove not only the sale or grant of the land to him but also the origin of the title of the particular person, family or community that sold or granted the land to him unless that title had been admitted - see **ALADE VS OWO** (1974) 5 SC 215, **PIARO VS TENALO** (1976) 12 SC 31, **ELIAS VS OMO BARE** (1982) 5 SC 25, **OGUNLEYE VS ONI** (1990) 2 NWLR (Pt.135) 745.

Before a court finds in favour of a party regarding title to land, the title to the land in dispute must be proved by credible evidence in that regard. In the instant case, as title to land is an issue here, the ways of proving title to land as laid down in case of **IDUNDUN v. OKUMGBA** (Supra) will be our guide. I also note that the parties in this case have largely restricted themselves to one of the ways of proving title to land as captured in the case of **IDUNDUN v. OKUMGBA** (Supra) and that is by documents of title. It is always the case that each competing interests in a land dispute are armed with title documents to establish ownership. It has become settled that in very such instance the courts will seek to find out which of the parties is better armed with such document of title. The position is that unless and until the Claimant shows a title superior to the defendant, the defendant must continue to keep possession of the land even if he is a trespasser. In **AMAKAR V. BENEDICT OBIEFUNA (1974) 3 SC 1; 306 PARAGRAPH C** the apex court, per Fatayi-Williams, JSC (as he then was) observed:

> **"Generally speaking, as a claim for trespass to land is rooted in exclusive possession, all a plaintiff needs to prove is that he has exclusive possession, or he has the right to such possession, of the land in dispute. But once**

a defendant claims to be the owner of the land in dispute, title to it is put in issue, and in order to succeed, the plaintiff must show a better title than that of the defendant."

In the present case, the documents that the parties seek to prove their title to the land in dispute can be found in Exhibits B and C tendered by the Claimant and Exhibits E, F and G tendered by the Defendant.

There is no dispute in this matter that both parties to this suit trace their root of title to one G. O. Aiwerioba. Exhibit C tendered by the Claimant and Exhibit E point in that direction. The law as set out in **SHOBAJO V. IKOTUN** (2003) 14 NWLR (part 840) 238 at 252 paragraphs D - E is as follows:

"Where it is common ground between the parties in a land dispute that the legal title in the disputed property is vested in a common vendor, the interests of the adverse claimants will, prima facie, rank in the order of their creation based on the maxim: qui prior est tempeore potior est jure, meaning: he who is first in time has the strongest claim in law. This is because generally what is first in time is better in law."

Exhibit C tendered by the claimant was entered on the 29th day of September, 1977 while Exhibit F drawing strength from Exhibit E was entered on the 10th day of October, 1977.

Deconstructing Exhibits A, A1 and G, there would seem to be material inconsistencies in documents relied on by the Defendant. It is hard to fathom how a land that has been completed in 1978 and occupied in 1986 vide the averments in Exhibits A and A1 would be said to be in the process of being developed in 1983, three years back. I agree with Claimant's Counsel that these facts do not add up. They therefore possess no evidential value.

Like I earlier said the parties in this suit have largely based their claim to the land in dispute on production of documents of title. Over and beyond relying on the equity of first in time when there are equal equities, the law is that in both competing equities, the one that is unblemished must rank first.

The production of title document is one of the recognised methods of proving title to land. But such a document, to evidence title, must be admissible in evidence, and must be of such a character as to be capable of conferring valid title on the party relying on it. Thus, it does not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an

instrument purports to grant is his own. Rather, the court must inquire into some or all of a number of questions including: (a) whether the document is genuine and valid; (b) whether it has been duly executed, stamped and registered; (c) whether the grantor had the authority and capacity to make the grant; (d) whether the grantor had in fact what he purported to grant; (e) whether it has the effect claimed by the holder of the instrument

Now, by Exhibit C, Claimant draws title from one G. O Aiwerioba. In the same vein by Exhibit F Defendant draws title from same G. O Aiwerioba through the instrumentality of Exhibit E. By the doctrine of creation of equities, the first in time would ordinarily prevail. There is however more to Exhibit F that needs further deconstruction.

The Claimant by virtue of his 2nd Further Amended Statement of Claim and further by Claimantôs additional statement on oath dated 11/4/2014 contends that Exhibit E which gives strength to Exhibit F was procured when the grantor therein was incarcerated in Lagos by the then Military authorities and as a consequence the said grantor couldnôt have executed the Deed of Conveyance in October, 1977 in favour of Mr. Felix Okunoghae who the Defendant contends granted the land in dispute to her. The above piece of evidence was not challenged, controverted or contradicted and I dare say the evidence is not of poor quality. It also

accords with sound reasoning that a man in detention from October, 1975 through to December, 1977 could not have executed any deed in favour of anyone in October, 1977. When a piece of evidence is unchallenged or uncontradicted by the opposing party who had an opportunity to controvert the evidence, the trial court has no alternative but to believe the evidence. See **OKEKE VS. AONDOKAA** (2000) 9 NWLR (Pt. 673) 501 at 516; **OMO v. J.S.C., DELTA STATE** (2000) 12 NWLR (Pt. 682) 444 and **OTUENDOR V. OLUGHOR & ORS**. (1997) 7 SCNJ 411. The question now is, who has the better title? From the foregoing, I make no hesitation in saying that there is no equity in favour of the defendant in the present case which he can rely on to defeat the Claimantõs interests.

Trespass to land is a violation of a possessory right and an action therein is maintainable at the instance of the person in possession or a person with the right of possession. A claim of damages for trespass to land is rooted in exclusive possession of the land. See **ANIMASHAUN V. OLOJO (1990) LPELR-491(SC).**

What is required of a Claimant is an action for declaration of title to land is at least to establish his claim by preponderance of evidence and to produce sufficient and satisfactory evidence in support of the claim. This the Claimant has done in this present case.

The question now is has the Claimant proved her case based on the evidence before court? The following question need be asked:-

1. Is the evidence admissible?
2. Is it relevant?
3. Is it credible?
4. Is it conclusive?

The above questions are answered in the affirmative in favour of the Claimant in this case.

In all, Claimant has satisfied this court as per his Claim and from the evidence led his claim must succeed. I therefore enter judgment in favour of the Claimant and make the following orders:-

a) A declaration that the Claimant is the owner and person entitled to the grant of a Certificate of Occupancy to the parcel of land measuring 50ft by 100ft within a larger parcel of land measuring 400ft by 400.3ft demarcated by beacon nos MQ1382, MQ 1383, MQ1384 and MQ1385 respectively, lying situate and in Ward 23/L Egua Edaiken Uselu Quarters, Benin City.

b) A declaration that the claimant as the owner of the parcel of land mentioned in prayer 1 above possesses exclusive right over the said parcel of land and any act done or purported to be done by the Defendant which is inconsistent with the rights of the Claimant is null and void and of no legal effect whatsoever.

c) A declaration that whatsoever improvements were brought about by the unauthorised completion by the Defendant of the Claimantôs uncompleted building, situate at Ward 23/L, Egua Edaiken, Uselu Quarters, Benin City, now known as No. 3, Ofunmwegbe Street, Edaiken Quarters, Uselu, Benin City, constitute part of the building and land and are legally reposed in the claimant.

d) An Order of perpetual injunction restraining the Defendant, her agents, servants, or privies from asserting any ownership rights and interests or contesting in any manner whatsoever, the Claimantôs rights and interests of ownership of the said parcel of land mentioned in prayer 1 above.

e) General damages of N1,000,000.00 (One Million Naira) only for trespass.

This is the Judgment of the court.