

**IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA**  
**IN THE AGENEBODE JUDICIAL DIVISION, HOLDEN AT AGENEBODE**  
**BEFORE HIS LORDSHIP, THE HON. JUSTICE E.O. AHAMIOJE,**  
**JUDGE, ON FRIDAY THE 27<sup>TH</sup> DAY OF NOVEMBER, 2015**

**BETWEEN:**

**SUIT NO. HAG/06/2009**

**DONATUS AREWA**

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**CLAIMANT**

(For himself and on behalf family  
of Late Chief Ikhamate K. Arewah)

**A N D**

**DEKHE COLEMAN**

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**DEFENDANT**

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

The Claimant's claim against the Defendant is as formulated in paragraph 16 of the Further Amended Statement of claim filed on the 24/9/2012 wherein he sought the following reliefs:

1. A DECLARATION that the Claimant is the owner of all that piece or parcel of land with an approximate area of 3447.184 sq. meters which is particularly delineated and marked red in the litigation Survey Plan number GOA/ED10/14 filed in this suit and therefore entitled to apply for grant of statutory right of occupancy over the land.
2. The sum of N4, 000,000.00 as damages for acts of trespass committed by the Defendant on the said Claimant's land which forms part of the land of Plaintiff covered by Survey Plan No. BD/1273/86 of 25/8/1986 made by F.U. Iyawe.
3. AN ORDER of perpetual injunction restraining the Defendant by himself, servants, agents and or privies from committing further acts of trespass on the land.

Pleadings were duly filed and exchanged by the parties. The Claimant testified on oath and called two (2) witnesses, while the Defendant testified in his defence and called three witnesses.

The case as presented by the Claimant can be summarised briefly as follows: The Claimant, Donatus Arewah gave evidence to the effect that the land in dispute formed part of the larger parcel of land deforested by his Great-Grand-father, Abokor who farmed on it with his children until his death. After his death, it was inherited by his son, Osikwemhe. He further stated that after the death of Osikwemhe, his son, Arewah inherited the land in dispute. On the death of Arewah, Ikhamate Arewah inherited the land, and on the death of his father, Arewah he inherited the land in dispute as the eldest son. He stated that Abokor is from Iviabagie kindred in Iviokpisa Ruling House in Weppa Wanno. He further stated that his grandfather, Arewah in exercise of his ownership of the land gave a parcel of the land to the Catholic Mission for the establishment of St. Gabriel Primary School now known as Omoaze Primary School which has a common boundary with their family house. That the Grandfather equally gave a parcel of land to the Catholic Mission to establish St. Peter Grammar School.

He stated that his father, Ikhamate K. Arewah also gave a parcel of land to the Catholic Mission to establish a convent i.e a School for the Reverend Sisters which is situate at Abokor Street, facing the New Auchu Agenebode Road. He stated that his late father, Ikhamate also gave a parcel

of land to the present Okumagbe of Weppa Wanno to build his house. He further stated that the father gave the following persons parcels of land to build their houses – Chief Ethuakhor, Mr. Umole, Mr. Raymond Odidi and Dr. Salawu. He said that before his father gave the parcels of land to the persons mentioned above, he planted mango trees, oranges, cashew trees and dug underground water well which exist till date. That the father surveyed the land in 1986, vide Exhibit 'C'.

He stated that in 1987, the late father applied for Customary right of occupancy which was granted by the Etsako Local Government Council. That after the death of his father in 2007, in exercise of his right of ownership over the land he sold a parcel of land to Mr. Thomas Oshogwemoh and put him in possession. He stated that he commissioned CW1 to carry out litigation Survey Plan, Exhibit 'A'. He maintained that the land in dispute is situate at Abokor Street, Agenebode upland named after the late Great Grandfather. That the land in dispute is bounded by St. Peter's Grammar School on one side; on the second side by landed property of Thomas Azimeye Oshogwemoh and Dr. Salawu and his wife (Mrs. Salawu) of Bode Medical Centre. On the third side is bounded by the house of his late father and on the fourth side by Abokor Street.

He stated that when the Defendant laid claim to the ownership of the land in dispute, he caused his solicitors to write a letter to him, vide Exhibit 'D', and the Defendant responded vide Exhibit 'E'. He stated that the land in

dispute does not belong to the Defendant's father. That the Defendant's father built a house at the water-side, and that the grave of the Defendant's father is not on the land he sold to Mr. Thomas Oshiogwemoh.

He further stated that in January 2005, his late father told him that he received from the Palace Exhibit 'F' stating that he would be duly informed of the date of hearing of the land dispute in the Palace. That the father was never invited after the letter. That he is not aware of any judgment by the Palace over the land in dispute on 26/8/2004. He stated that the relationship between his father and the Okumagbe of Weppa Wanno was not cordial prior to his death. That the Okumagbe has no major role to play in land transaction. He stated that the Defendant's father was a cook to the Catholic Missionary. He urged the Court to enter judgment in his favour as per the reliefs sought.

Cross examined by F.A. Okanigbuan, Esq of Learned Counsel for the Defendant, the Claimant stated that he is not aware that the Defendant sold part of his land to Dr. & Mr. Salawu. He state that there is no building on the exact land in dispute. That there is a wall fence between St. Peters' Grammar School and the land in dispute. He stated that his late father did not attend any Peace meeting in the Palace of Okumagbe in respect of the ownership of the land. He denied the fact that his great grand-father, Abokor is an Igala man from Kogi State. He denied the fact that one Francis Deke gave out a Parcel of Land surrounding the area in dispute. He stated

that the consent of the Okumagbe is not needed when a Parcel of land is given to an Institution by his owner. That the Parcel of land given to Afrik Bank by the Claimant's late father was not done with the consent of the late Okumagbe.

CW1, Grey Osagie Akhimien is a registered Surveyor. He stated that sometime in October 2010, the Claimant approached him to prepare litigation Survey Plan for him. The Claimant took him to the land and showed him the boundaries and features on the land such as houses and economic trees. He carried the survey and produced a plan, Exhibit 'A'. He stated that the portion marked "RED" in Exhibit "A" is the area in dispute, and that marked "GREEN" is the entire land of the Claimant's father. That there is also an Underground water tank dug by the Claimant's late father.

Cross examined by F.A. Okanigbuan, Esq of Learned Counsel for Defendant, CW1 stated that he did not see any grave on the land in dispute. That Dr. Salawu owned a portion of land close to the land in dispute. That he saw a land belonging to Barrister Ayemoba close to the land.

C.W. 2 is Oshokhamele Egbekhai Okokobi. His evidence is substantially the same with the evidence of the Claimant. He traced the genealogical tree of the Claimant from the Great GrandFather, Abokor to the Claimant. He equally gave evidence of the boundary neighbours of the Claimant, and some persons the Claimant predecessors-in-title made a grant and or sold adjoining parcels of land to the land in dispute. He stated that

the land in which the Covent building , Omoaze Primary School and St. Peters Grammar School are situate originally belong to Abokor. That it was Abokor who deforested the land. He further said that the Abokor was the original owner of the land where Afri Bank Plc. is built. He stated Mr. Ikhamate Arewah gave the parcels of land to one Chief Ekhakor and H.R.H. George O. Egabor, the Royal Highness of Weppa Wano to build their houses. He stated that the father of Defendant was a cook to the Rev. Father of the Catholic Mission and was living with him in the Mission Quarters. That the father of the Defendant built a house at Egbado Quarters.

Cross-examined by Mr. F.A. Okanigbuan, Esq., the C.W. 2 stated that Michael Iviemo had no mud house on part of the land in dispute. He said that he would not know if Barrister Ayemoba has a parcel of land close to the land in dispute. He denied the fact that the Defendant gave a parcel of land to Dr. Rasheed Salawu to build his house, but was given to him by Ikhamate. He stated that Thomas Ezemiye Oshiogwemoh has a house close to the land in dispute, and it was the Claimant who sold the parcel of land to him. He denied the fact that Abokor is an Igala man from Kogi State. He denied the fact that the Defendant has a house close to the land in dispute.

At the close of the Claimant's case, the Defendant opened his case. He adopted his sworn deposition on the 26/9/14 wherein he stated that the land in dispute is situate and lying along Auchu-Agenebode Road, Iriabagie,

Agenebode. He averred that Abokor was not the person who deforested the parcel of land, rather, the great grandfather Ighiadebo from Iviokoisa Ruling House deforested the land and built a Mud Mosque on part of the land in dispute. That Ighiadebo gave birth to Ugbemoh and members of Ighiadebo lineage inherited and continued to exercise control over the land. He stated that after the death of Ighiadebo, Ugbemoh inherited the land and built a Mud house on part of the land. That he also planted arable and economic crops on the land. He died and was buried on part of the land. He stated that Francis Dekhe was the next most senior son, but he was a trained locomotive driver in Kano at the time of the death of Ugbemoh. Mr. Michael Aviomoh who was next to Francis Dekhe resident in the Mud House built by Ugbemor started to farm on part of the land. He stated that when Francis Dekhe eventually came home from Kano, he took over the mud house and the entire land from Michael Aviomoh and continued farming on part of the land. When he died, he was buried on the land. That after the death of Francis Dekhe, Mark Uduimoh took over the land as the eldest son of Francis Dekhe and continued farming on the land. That he later erected another house in Egbedu where he lived. That after the death of mark Uduimoh, he being the next eldest son of Francis Dekhe inherited the land in dispute. That he was a soldier who served in various part of the Country.

He further stated that in 1983, when he visited home, he found that Ikhamate had erected a building on part of the land. He confronted him and asked him to leave the land. Thereafter, he reported the trespass to H.R.H. Oshioma Assas who told Ikhamate Arewah to leave the land for him before he left home again for Military Service. That the Claimant took advantage of his absence to trespass into the land in dispute. He stated that in 1991, he retired from the Army and returned home to discover that Ikhamate Arewah have sold parts of the land to Dr. Salawa Rashed. He then summoned Ikhamate and Dr. Salawu before the Okumagbe of Weppa Wanno in 2004. He stated that after the deliberation, the Okumagbe gave judgment in his favour Exhibit "G" which was duly signed by Secretary. That after the judgment, Ikhamate Arewah came with some people to plead with him to retain the house he built on his father's Grave and he refused. That Dr. Salawu paid him for the land which Ikhamate wrongly sold to him. That after the judgment, Ikhamete did not trespass into any part of his land again up till his death. He also stated that Thomas Azimeye Oghowemoh who Ikhamate sold a part of the land to also paid him for the land. That he sold a portion of the land to Barrister Ayemoba. He stated that his father Francis Dekhe gave parcels of land to Catholic Mission Church to erect a Covent, St Peters Grammar School, Afrik Bank Plc. and various people. He urge the Court to dismiss case of the Claimant.

Cross-examined by S.K. Mokidi, Esq. the Defendant stated that his father, Francis Dekhe was buried at Egbadu Quarters in his house, but the grand father was buried on part of the land in dispute. He stated that the land at Egbadu Quarters is originally not their family land. That the Grand-father, Dekhe Ugbomor deforested the land. That the underground well on the land was constructed by the Claimant's father. He stated that he did not sue the Claimant's father over the House he built on the land in 1983 but reported to the Okumagba. That it was his father who planted the economic trees on the land. That the father built the house at Egbadu after he retired from service. He maintained that his father was a driver to the Railway Corporation and not a cook to the Catholic Mission. He stated that the grand-father's Grave is not on the land of Thomas Azemiye. That the father's mud house is no longer on the land in dispute. He stated that the Mosque, the borehole and concrete wall fence belong to Dr. Salawu. He stated that he sold the parcel of land to Dr. Salawu after the Judgment. He stated that the name of the Street where the land is situate is known as Abokor Street. He stated that under Weppa Wanno Custom, when a man dies, the eldest son inherits his property. He stated that between 1983-1991 he do visit Agenebode, and did nothing about the land till 2004. He stated that his father gave him a parcel of land in 1955. That he was born in 1942. That his land is different from the land of Omoaze Primary School

premises. That his father shared the land to all his children. That it was the land given to him that was trespassed on by the Claimant's father.

Next to testify is Chief John Oyakhamo Dokpesi, DW 1. He adopted his sworn deposition on the 25-2-13 wherein he stated he is a Palace Chief in Weppa Wanno. That he attends meetings regularly for settlement of matters. That sometime in 2004, he was present in the Palace when the land dispute between Chief Ikhamate Arewah and the Defendant came up for deliberation. That Chief Ikhamate Arewah was present at the Okumagbe Palace throughout the deliberations of the matter. That the parties presented the evidence/facts before the settlement panel presided over by the Okumage, Dr. George O. Egabor. He stated the Okumagba gave judgment in favour of the Defendant. That the Defendant performed the Okhe title as a member of his family.

Cross-examined by S.K. Mokidi Esq., he stated that Chief Okhamate Arewah had a dispute with Chief yakubu Oselamah over fish pond which went to High Court, Auchu for adjudication. He stated that Okumagba normally send out written invitation to the person summoned to appear before the palace. He stated that he was present on the 24/8/2004.

D.W. 2 is Chief Gabriel Omiogbemi. He adopt his sworn deposition wherein he stated that he is the Secretary to Okumagbe in Council, Agenebode. He stated that sometime in 2004, the Defendant reported to the Palace that Chief Ikhamate Arewah trespassed and sold part of his

father's land. Based on the complaint, Chief Ikhamate Arewah was invited to the Okumagbe palace and Ikhamate gave his statement before the Settlement Panel Members with respect to the dispute as well as the Defendant. That other witnesses also gave evidence which was presided by the Okumagbe. At the end of the deliberation, judgment was given in favour of the Defendant vide Exhibit "G". The judgment was signed by Okumagbe and himself.

Cross-examined by S.K. Mokidi, Esq. D.W. 2 stated that the committee visited the land in dispute before the decision in Exhibit 'G'. That he was not a member of the committee that visited the land. That he signed Exhibit 'F'. He said that there is no underground well on the land. That the Claimant's father has a house on the land. That the land was deforested by Francis Dekhe. He said that Francis Dekhe was not a cook to the Missionary but was always around as a Catholic. He stated that as at the time Exhibit "H1" was signed, the Claimant's father had sold a portion of the land in dispute to Dr. Salawu .

D.W. 3, is Dr. F.U. Iyawe, a Registered Surveyor. He adopted his sworn deposition wherein he stated that he was commissioned by the Defendant to carry out litigation survey of a parcel of land. That he took him and showed him the land including the features. He then produced a plan on the 13/10/2011. He stated that there are mango and economic trees belonging to the Defendant.

Under cross-examination, he stated that he made Exhibit "C" in 1986 with the coordinate National tied to the local origin, while Exhibit "J" is tied to National origin. That because of this, it is impossible to say if the two plans relate to the same land. He stated that the old well belong to the Defendant's father. That the borehole is on Dr. Salawu's land. He stated that he did not see the grave but was identified to him by the Defendant as that of his father.

At the close of the Defendant's case, and in line with the Rules of Court, the parties filed their written Addresses.

Francis A. Okanigbuan, Esq. of Learned Counsel for the Defendant filed his written address on 10/10/2014. Learned Counsel stated a brief introduction of the case and formulated four issues for determination thus:

1. "Is he Claimant entitle to the relief of title to the land having regard to the evidence of Defendant that he had severally challenged the father of the Claimant for trespass into the land in dispute?"
2. Has Claimant established by acts of long possession and enjoyment in respect of the land in dispute?"
3. Has the evidence of customary arbitration to which the father of Claimant voluntarily subjected himself to which was not challenged in Court estopped the Claimant from instituting this action?"
4. Has the Defendant establish by evidence his title by tradition history and proof by selling part of the land in dispute?"

He submitted that the Claimant has failed to prove by evidence his root of title. He posited that to succeed in action of this nature, the Claimant must prove by evidence his title through one or more of the five ways of proving title to land which he enumerated, and cited *RESSEL L.Y. DAKOLO & 2ORS V. REWANE GREFOR Y & 3ORS* (2011) Vol. 198 LRCN 1 at P. 9 Ratio 4, p. 24 paragraphs EEJJ & p. 25 paragraphs AK, *D.O. IDUNDUN & 6ORS V. DANIEL OKUMAGBA I ACLC P.137* Appellate Court Land Mark Case 1 ACLC P. 137 at P. 138 RATIO 2, *TIJANI JOLASUN V. NAPOLEON BAMGBOYE* (2011) ALL FWLR (PT. 595) P. 202.

On issue two, Learned Counsel submitted that Ikhamate Arewah was never in peaceful possession of the land in dispute while he was alive. He argued that Ikhamate Arewah continuous trespass into the land while he was alive cannot ripen to his title to the land, and cited *CHRISTOPHER OBUEKE & 2ORS V. N. N. NNAMCHI & ORS* (2012) VOL. 5-7 MJSC (PT. II) 1 AT P. 4 RATIO 1, AT P. 34, PARAGRAPHS C-D, and *ONIAH V. ONYIA* (1989) 1 NWLR (PT. 99) 514.

He urged the court to hold that the Claimant has failed to establish his proof of title by traditional evidence and has equally failed to proved his ownership of the land in dispute by act of long possession and enjoyment in respect of the land because the Defendant has by his evidence before this Court that he has over the years protested/objected to the acts of trespass of Ikhamate Arewah. He urged the Court to hold that since the evidence of

the Claimant is unsatisfactory, the judgment should be in favour of the Defendant, and cited IREJU NWOKIDU & ORS V. MARK OKANU & ANOR (2010) 183 LRCN 14 AT 126 RATIO 14 AT P. 153 PARAGRAPH UZ.

On issue three, Learned Counsel submitted that Claimant was aware of the series of protest/objection by the Defendant in respect of the trespass into the land by his father Ikhamate Arewah first to His Royal Highness Oshonia Assas in 1983. He argued that in 2004, he again summoned the father of the Claimant (Ikhamate Arewah) in the Palace of Okumagbe of Weppa Wanno Agenebode in respect of the acts of trespass into the land in dispute. He submitted that the Claimant's father voluntarily subjected himself to customary arbitration while alive and accepted the verdict. That even though the Claimant denied both in his evidence and under cross examination that his father never subjected himself to customary arbitration, he posited that the content of Exhibit G clearly showed that the Claimant's father appeared and voluntarily subjected himself to customary arbitration. He further submitted that Exhibit G speaks for itself and evidence cannot be led to contradict or vary the content of a document.

He finally on this issue urged the Court to hold that the Claimant should not have instituted the pending action over a land in respect of which his father had accepted the decision or award of the customary arbitration at that time.

On issue four, Learned Counsel submitted that the Defendant and his witnesses have established by evidence his traditional title and occupation, farming and selling part of his land. He argued that the Defendant in his evidence under cross examination on 25/9/2014 said that he sold part of his land to Thomas Azimeye, Dr. Salawu Abdul Rasheed and Chief Mrs. Latifat Salawa and the agreements were admitted as Exhibits H1 and H2. That the two documents were duly registered in compliance with the Court order. He urged the Court to hold that the Defendant has in addition to his traditional evidence, equally proved his acts of ownership by selling part of his land establishing his true ownership of the land in dispute. He cited YELE OYENEYIN VS. AKINKUGBE & ANOR (2010) 183 LRCN 82 AT 86 RATIO 2, AT P.97.

He finally urged the Court to dismiss the Claimant's case as he has failed to establish by credible evidence any of the five ways of establishing to title land.

On his part, S.I. Mokidi, Esq. of Learned Counsel for the Claimant filed his written address on 10/11/2014. He, in a nutshell stated the case of the Claimant and that of the Defendant in pages 1 – 2 of his written address and distilled a sole issue for determination thus:

“Whether from the pleadings and evidence the Claimant has proved his case on the balance of probability or preponderance of evidence to entitle him to the reliefs sought?”

Arguing the issue, he submitted that it is settled law that a Claimant in a civil matter has the burden of proving his case on the balance of probability or preponderance of evidence if he must succeed. He posited that the person who asserts has the primary onus of proving the assertion thereof, and cited *ONYA V. OGBUJI* (2011) FWLR (PT. 566) 493 AT 513.

He further submitted that the first duty of a Claimant seeking a declaration of title to land is to prove clearly the precise area to which the claim relates. That this burden will not exist where the identity of the land indispute was never a question in issue, and cited *OGUN V. AKINYELU* (2005) 123 LRCN 96 AT 117. He argued that the identity of the land in dispute is not in dispute.

He contended that a Claimant who seeks a declaration of title to land must prove his root of title to the land. That the five ways of proving title to land have been enunciated in *IDUNDUN V. OKUMAGBA* (1976) 9-10 SC 227, *OLOWU V. AMAYO* (2012) ALL FWLR (PT. 639) 1091 AT 1126 AND *BAMIKOLE V. OLADELE* (2011) ALL FWLR (PT. 562) 1699. He posited that the five methods are not cumulative. Thus, where a Claimant is able to establish one or more of them, he is entitled to succeed. He submitted that the Claimant relied on traditional evidence. In addition, he was able to establish his title by acts of possession and proof of connected or adjacent land.

He contended that where a claim for declaration of title to land is based on traditional history, Claimant needs to adduce cogent evidence of

traditional history and cited OYEKAN V. OYEWALE (2012) ALL FWLR (PT. 623) 1991 AT 2007. He referred to paragraphs 6 and 7 of the Further Amended Statement of Claim, evidence of CW2 and the Claimant. He cited EYO V. ONUOHA & ANOR (2011) 195 LRCN AT 83; OTANMO V. YAUDUBAGHA (2006) 2 FWLR (PT. 308) 1995.

He submitted that cogent and credible evidence which is not challenged or contradicted ought to be accepted or acted upon by the Court, and cited GAMADI V. YAHANNA (2006) 2 FWLR (PT. 308) 1968 at 1983. He submitted that a Claimant succeeds on the strength of his own case and not on the weakness of the defence. However, where the defence's case support the Claimant's case, like an admission against interest, such a situation adds weight to the Claimant's case and the Claimant is entitled to rely on that evidence led by the adverse party, and cited BAMIKOLE V. OLADELE (2011) ALL FWLR (PT. 562) 1699 AT 1716 and ONYA V. OGBUJI (2011) ALL FWLR (PT. 556) 493 AT 528 and referred to Exhibits H1 and H2.

He argued that although there is no burden of proof on Defendant to prove title to the land in dispute but it is necessary to look at his pleadings and evidence in support thereof. He referred to paragraphs 15, 16, 17, 18, 19, 20 and 21 of the Further Amended Statement of Defence filed on 20/6/2012 and paragraphs 13, 14, 15, 16, 17, 18 and 19 of the Defendant's Statement on oath. He contended that it is clear that the Claimant's

evidence on his root of title is more cogent, credible and preferable to that of the Defendant.

On the issue of customary arbitration, he submitted that Exhibit G is not relevant and does not advance the case of the Defendant for the reasons stated in p. 6 of his written address. He contended that Exhibit G did more damage to the defence's case for the reasons he stated in pages 6 and 7 of his written address. He urged the Court to hold that there was no customary arbitration.

He submitted that the Claimant proved acts of possession and long enjoyment of the land in dispute. That in addition, he proved that he has land connected or adjacent the land in dispute. That the Claimant traced his root of title and gave evidence of his family's act of possession over the land. That his late father constructed an underground well on the land in dispute, which is marked 'W' in both Exhibits "A and F". He argued that under cross-examination, the Defendant admitted that the Claimant's father built the underground well on the land in dispute. That there is clear evidence from the Claimant that Abokor and his descendant farmed on the land and Claimant's father planted citrus trees on the land. That the Defendant did not debunk this but merely states that Claimant's father took advantage of his being away on national service in the military to take over the land curiously, even when he was coming at intervals and on retirement he did nothing to challenge Claimant's father title to the land.

He urged the court to hold that the Claimant has established his title to the land in dispute on balance of probability and therefore entitled to the reliefs sought.

Now, the law recognizes five distinct ways in which title to or ownership of land in Nigeria could be proved as stated by the Supreme Court in the case of *IDUNDUN V. OKUMAGBA* (1976) 9 - 10 SC 227.

These are:

- (a) By traditional evidence.
- (b) By production of documents of title duly authenticated and executed.
- (c) By acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference of true ownership.
- (d) By acts of long possession and enjoyment, and
- (e) Proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition be the owner of the land in dispute.

See: *AIGHO BAH V. AIFUWA* (2006) 136 LRCN 1021 AT 1038.

In an action for declaration of title to land a Claimant need not prove all the five ways. Where the Claimant's case is based on traditional evidence of ownership as the legal basis of his claim, as in the instant case, his duty is limited to proving such traditional title and no more.

The law is firmly settled that to establish traditional history of the land relied on as proof of title, a Claimant must plead the names of the founder

and those after him/her upon whom the land devolved to the last successor(s), and lead evidence in support without leaving gaps or creating mysterious or embarrassing linkages which are not explained.

See: OLOSHE V. OGUNBODE (2003) FWLR (PT.148) 1326 AT 1340;

BALOGUN V. YUSUF (2010) 9 NWLR (PT. 1200) 515 AT 536.

In the case of DAGACI OF DERE V. DAGACI OF EBWA (2006) 7 NWLR (PT.979) 382 AT 452-453, NIKI TOBI, JSC stated the principle in a more admirable manner thus:

“In land matter, it is easy for a Claimant to claim that he owned the land from time immemorial. However, he must show a genealogical tree of the family ownership of the land. It is usually a long story of members of the family in ownership of the land from the past to the present. The Claimant must print a picture of genealogical lines and names spreading like branches of a tree, telling a consistent and flowing story of undisturbed ownership or possession of the land. An the flowing story which should first be told in the pleadings should mention specific person as ancestors before the witnesses give evidence to establish the averments in the pleadings.”

See: RAPHAEL V. EZI (2015) 12 NWLR (PT. 1472) 39

Now, in the instant case, the Claimant relied primarily on evidence of traditional history in proof of his claim to ownership and possession of the land in dispute. In his evidence, he stated that the land in dispute formed part of the larger parcel of land that Abokor deforested and farmed on until he died. That on the death of Abokor, his son, Osikweme inherited the land, and on the death of Osikweme, his son Arewa inherited the land and

farmed on same. Further, on the death of Arewa his son Ikhamate Arewa, who is the Claimant's father inherited the land, and on his death the Claimant inherited it. The evidence of the Claimant was substantially corroborated by the evidence of C.W. 2 who traced the genealogical tree of who deforested the land and how it finally devolved on the Claimant.

The Defendant, on his part, resisted the claim of the Claimant. He stated that his Great Grandfather Ighiadebo deforested the land in dispute and upon his death, the son Ugbemor inherited the land. That after the death of Ugbemor, Francis Dekhe inherited the land before Mark Uduimoh inherited same. That after the death of Mark Uduimoh, the Defendant inherited the land.

It is important to note that the parties are *ad-idem* as to the identity of the land in dispute and its boundaries which needs no further proof.

Let me quickly say that I have carefully and painstakingly considered the entire evidence adduced by the parties in line with their pleadings. I have also given due consideration to the submissions of learned Counsel for the parties and the plethora of judicial authorities cited therein. Having considered the totality of the evidence led, it is clear that the Claimant gave unbroken traditional evidence of how the land in dispute formed part of the larger piece of land deforested by his Great Grandfather, Abokor to how it eventually devolved on him. The testimony of the Claimant was amply

corroborated by the evidence of C.W. 2, Oshokhamele Igbekhai Okokobi who traced the genealogical tree of the Claimant from the Great Grandfather, Abokor to the Claimant. The evidence of the Claimant and his witness particularly C.W. 2 remained unshaken or not discredited under cross-examination by the Defendant.

On the other hand, the Defendant gave a contradictory or conflicting traditional history of how the land eventually devolved to him. In his further Amended Statement of Defence filed on the 20/6/12, particularly paragraphs 15, 16, 17, 18, 19 20 and 21, he pleaded his genealogical tree and stated that Ighiadebho was the 1<sup>st</sup> person to deforest the land in dispute. This crucial averment was contained in his sworn deposition in paragraphs 13, 14, 15, 16, 17, 18 and 19. However, and curious as it may seem, the Defendant under cross-examination stated categorically that it was Ugbemor who deforested the land in dispute. His evidence was progressively worsened by the testimony of his witness DW 2, Gabriel Omoigbemi who stated under cross-examination that from records, he found that the land in dispute was deforested by Francis Dekhe, the Defendant's father.

In the case of OGUNJEMILA V. AJIBADE (2010) 11 NWLR (PT. 1206) 559 AT 582 – 583, the Court of Appeal held thus:

“Where the evidence of the witness of one party is contradictory on the traditional history of ownership, his case should fail.”

See: UKAEGBU V. NWOLOLO (2009) 3 NWLR (PT. 1127) 194.

Aside from this, the Claimant also led credible evidence to prove acts of possession and long enjoyment of the land in dispute. He equally proved that he has land connected or adjacent the land in dispute. He gave evidence of the family's act of possession over the land and led evidence that his late father, Ikhamate Arewa constructed an underground well on the land in dispute which is marked "W" in both Exhibits "A and F". The Defendant under cross-examination admitted that the underground well was constructed by the Claimant's father. In addition, the Claimant gave clear evidence that his Great Grandfather, Abokor and his children farmed on the land and planted economic crops thereon. The evidence of the Claimant and his witness, CW 2 were never contradicted, controverted or challenged by the Defendant. It is remarkable to note that the Defendant merely stated that the Claimant's father took advantage of his being away on Military Service to take over the land. It is strange and curious that the Defendant who stated that he visited Agenebode at intervals while in Military Service between 1983 – 1991 or on retirement did nothing to challenge the Claimant's father ownership of the land in dispute until 2004. In addition, to prove further acts of undisturbed ownership, the Claimant's father surveyed the land in 1986 vide Exhibit "C" without any disturbance or interference from the Defendant. The Claimant also led evidence that his father's house has boundary with the land in dispute which is clearly shown

in Exhibit "A" and was admitted by the Defendant who stated that it was built on the father's Grave. However, the Defendant admitted that the father was buried at Egbadu Quarters. The Claimant further gave evidence of some persons that his predecessor-in-title made a grant or sold adjoining pieces of land to the land in dispute which include Dr. Salawu, Mr. Raymond Ozoboni, Thomas Azimeye Oshogwemho, the Catholic Mission for the establishment of Omoaze Primary School, St. Peter Grammar School and the Catholic Convent. The Defendant admitted that the Claimant's father sold land to Dr. Rasheed Salawu but stated that he resold to him after the decision of the Customary Arbitration, Exhibit "G". The evidence of the Claimant of acts of long possession and ownership of land remains unshaken. It is my view that the fact that the Claimant's predecessors-in-title made a grant or sold pieces of land to various persons and institutions, built a house and constructed underground well on the land in dispute and farm on the surrounding areas of land in dispute without challenge from the Defendant is a clear demonstration of the fact that he is likely to be the owner of the land in dispute, and I so hold.

See: IDUNDUN V. OKUMAGBA (1976) 9 – 10 SC 227.

Before I draw the curtain, let me quickly take the issue of customary arbitration.

Howbeit, it is an elementary principle of law that arbitration at customary law will be recognized if the following conditions are satisfied:

- (a) If parties voluntarily submit their disputes to a non-judicial body for determination.
- (b) The indication of the willingness of the parties to be bound by the decision of the non-judicial body or freedom to reject the decision where not satisfied.
- (c) That neither of the parties has resiled from the decisions so pronounced.

See: ODONIGI V. OYELEKE (2001) 6 NWLR (PT. 708) 12

RAPAE V. EZI (SUPRA) AT 60 R. 7

ACHORA V. ADEJO (2010) 6 NWLR (PT. 1191) 548 AT 549.

In paragraph 25 of the further Amended Statement of Defence, the Defendant pleaded the customary arbitration by His Royal Highness, Dr. George O. Egabor JP, the Okumagbe of Weppa Wanno, Exhibit "G". The Claimant in paragraphs 2 (ii) (iii) & (iv) of the Reply to further Amended Statement of Defence expressly averred that his late father was neither invited nor submitted to any customary arbitration by Okumagbe of Weppa Wanno or any other body. That the Claimant's father in January, 2005 received a document or summons for encroachment signed by Chief Omoigbemi which states that Claimant's father will be notified of the date he would appear but he was never notified. That the purported judgment of 26/8/2004 by HRH Dr. George Egabor JP, Exhibit "G" was made for the purpose of this case.

It is important to note that Exhibit "G" is replete with many flaws which cast doubt on its credibility. First, Exhibit "G", which is the award or

decision of the Customary Arbitration made on the 26/8/2004 predates the letter of invitation, dated 20/1/2005 Exhibit "F" addressed to the Claimant's father to notify him of a date to be fixed for the arbitration. This demonstrably confirmed the fact by the Claimant that his late father never took part in the Okumagbe settlement panel. It will therefore be stating the obvious to point out that some of the conditions for a valid customary arbitration, i.e. voluntary submission of dispute and the willingness to be bound by the outcome was totally lacking. Secondly, Exhibit "G" contained apparent and irreconcilable contradictions with the pleading and defence put up by the Defendant. It is remarkable to note that the Claimant pleaded in paragraph 14(ii) of his further Amended Statement thus:

"Dekhe was a cook to the Catholic Mission and being a cook was subject to transfer from one station to another and stayed in the accommodation provided by the Catholic Mission."

Defendant in response, pleaded in paragraph 17 of the further Amended Statement of Defence that the father, Francis Dekhe was a locomotive Driver in Kano and never worked with the Catholic Mission. He equally restated this in paragraph 15 of his sworn deposition and under cross-examination. Curiously, in Exhibit "G" at page 1, lines 3 – 6, the Defendant was recorded to have stated thus:

"Mr. Coleman Dekhe said that his father lived and worked with the Missionaries of the Catholic Mission and so he lived and farmed in the areas where Chief Arewah has claimed to be his land".

Continuing at page 2 lines 15 – 18, it was recorded thus:

“Coleman said that he was following his father to the farm in that area and that his association with the Catholic Missionaries made him to live close to the mission and begin to farm in all that area which is opposite the Catholic Mission.”

It is quite amazing that the Defendant who gave such evidence before the Okumagbe settlement panel could come before this Court to categorically deny that his father ever worked with the Catholic Mission. What is more, he contrived a puerile story of his father being a locomotive Driver in Kano which gave the Claimant’s father the opportunity to claim ownership of the land in dispute. It is my view, that this conflicting and contradictory posturing of the Defendant casts serious doubt on Exhibit “G” and its contents. In the result, I find and hold as a fact that Exhibit “G” is not a valid customary arbitration that would debar the Claimant from litigating this matter in view of the several flaws earlier adumbrated in this judgment.

Let me say that the claim of the Claimant earlier set out shows that apart from the claim for declaration of title, he also claims N4 million for damages for trespass and injunction. The Claimant gave evidence of the acts of Trespass committed by the Defendant. The Defendant admitted that he went to the persons the Claimant father sold land to and resold the land to them. He also admitted selling part of the land in dispute to Mr. Ayemoba.

The law is that the slightest interference with the land in peaceable possession of another amounts to trespass for which the Claimant is entitled to an award of damages.

See: ECHARE V. EZIRIKE (2006) 12 NWLR (PT. 994) 386.

I hold that the Claimant has established that the Defendant unlawfully trespassed on his land without his consent.

On the whole, after weighing the entire evidence of the parties, it is my assessment that the Claimant has proved a better title to the land in dispute, in view of all I had earlier said. In other words, the Claimant presented a more credible, plausible and convincing case, and I prefer his case to that of the Defendant.

Consequently, I find and hold that the Claimant has successfully proved his case on the preponderance of evidence as required by law.

Accordingly, I hereby enter judgment in favour of the Claimant against the Defendant on the following:

1. A declaration that the Claimant is the owner of all that piece or parcel of land with an approximate area of 3447.184 sq. meters which is particularly delineated and marked red in the litigation Survey Plan number GOA/ED10/14 filed in this suit and therefore entitled to apply for grant of statutory right of occupancy over the land.
2. The sum of N500, 000.00 as damages for acts of trespass committed by the Defendant on the said Claimant's land.

3. An order of perpetual injunction restraining the Defendant by himself, servants, agents and or privies from committing further acts of trespass on the land.

The Claimant is entitled to costs which I assess at N30, 000 against the Defendant.

E. O. AHAMIOJE,  
JUDGE.  
27/11/15.

**COUNSEL:**

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F. A. OKANIGBUAN, ESQ. .... FOR THE DEFENDANT