



state Government of Nigeria and covered by Certificate of Occupancy No. EDSR 12538 dated 6<sup>th</sup> August, 1996 and registered as Number 28 at page 28 in volume B. 179 of the Lands Registry in the office at Benin City in favour of the Claimant.

- 2 a.) N2,184,000.00 (Two million, one hundred and eighty-four thousand Naira) being the loss of rents/income for the 24 chalets in the plaintiff's aforesaid property at the rate of N250.00 per chalet per room (N6000,00 per night for the 24 chalets) for the period 2<sup>nd</sup> January 1996 to 31<sup>st</sup> December 1996;
- b.) N2,664,000.00 (Two million, six hundred and sixty-four thousand Naira) being the loss of rents/income for the 24 chalets in the said property at N250.00 per night per Chalet for the period of 1<sup>st</sup> January 1997 to 20<sup>th</sup> March 1998;
- c.) N6,000 (six thousand Naira) per night for the 24 chalets at the rate of N250.00 per chalet per night from 21<sup>st</sup> March 1998 till the date of judgment in this suit being the loss of rents/income in the said chalets;
- d.) N2,582,400.00 (Two million, five hundred and eighty-two thousand four hundred naira) being the loss of rents/income for the 4 suites in the claimant's said property at the rate of N800.00 per suite per night in the sum of N3,200 for the 4 suites in a night for the period 2<sup>nd</sup> January 1996 to 20<sup>th</sup> March, 1998;
- e.) N3,200.00 (three thousand two hundred naira) for the 4 suites per night at the rate of N800.00 per suite per night from the 21<sup>st</sup> of March 1998 till the date of judgment in this suit being the loss of rents/income in the suites;

- f.) N10 million general damages for the Defendants acts of tress pass on the said property;
- g.) N5 million exemplary damages against the 2<sup>nd</sup> Defendant
- 3) N404,000.00 being the amount expended and paid by the Plaintiff on the materials and jobs concluded by the contractors on the property and damaged or converted by the Defendants.
- 4) An order of perpetual injunction restraining the Defendants by themselves, their servants, agents, assign and/or privies whomsoever and howsoever from exercising any further right of ownership or possession and/or entering or trespassing or interfering or acting in any manner inconsistent with the rights or interests of the claimant on the aforesaid property.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants originally filed their joint Statement of Defence on the 12<sup>th</sup> of May, 2003 while also joining and claiming against the 3<sup>rd</sup> and 4<sup>th</sup> Defendants as third parties in this suit. The extant joint statement of Defence is dated and filed on 12<sup>th</sup> June, 2013.

The Claimant's case opened on 11/5/11 with CW1 Ikoghode Julius, the Chief executive officer of the claimant company testifying that he knows the property known as Bendel Hotels Auchi located at the Hill top along Old G.R.A Road Auchi. The property is in a premises of 4.037 hectares, consisting of a storey building containing 24 single chalets with their accessories i.e. toilets e.t.c . He stated further that there are other buildings and green areas on the property and the property belongs to the claimant. The property formerly belonged to the

defunct Bendel State Government and later the Edo State Government. The Edo State Government made a public offer for the sale of the Hotel, through the Technical Committee on Privatization and Commercialization in Edo State. The claimant bid for the property and was offered same for N2,100,000.00 which he bought. The claimant signed an agreement Exhibit A.

The claimant was led to the property by the 3<sup>rd</sup> Defendant and handed over the property. The claimant was issued a Certificate of Occupancy on 6/8/96 Exhibit B. Before the property was bid it was under the ownership of the Edo State Government. After taking possession of the property, the claimants employed the services of a civil engineering Company Udu & Co to carry out perimeter wall fencing of the property and necessary renovations to the buildings. An agreement was entered into by both Companies vide exhibits C. CW1 tendered exhibit D receipts of payments for work done by the civil engineering Co.

CW1 further testified that after the first Certificate of completion of the fence was submitted by the Company and paid for vide Exhibit E, the 2<sup>nd</sup> Defendant came into the land with fierce looking men and drove away the contractors and his workers and destroyed the fence. He tendered Exhibit E1 receipt for payment of work done for the sum of N104,000. The 2<sup>nd</sup> Defendant took over the premises and used up all the materials. CW1 wrote letters of complaint to the State Government as well as the Deputy Inspector General of

Police Benin City. The State Government replied vide Exhibit F. The Company bought the property to continue using it as a hotel as it is one of the conditions the government considered in selling the property to them and that they give priority to the indigenes of the State in employment. The 2<sup>nd</sup> Defendant is using the house for residential purposes. CW1 stated that they have not been getting revenue from the property since the incident took place as they have no access to the property. Through the report compiled by their P.R.O exhibit G, they discovered that a chalet is N2,000 a night and a suit is N800 a night.

CW2 Fred Omokhudu a civil engineer testified on 25/10/11 that on the 4<sup>th</sup> day of May 1995, the Claimant and himself signed an agreement (Exhibit C) on behalf of both their Companies for the rehabilitation of Bendel Hotels Auchu. He stated that in furtherance of Exhibit C on 5<sup>th</sup> day of May 1995, the claimant paid a mobilization fee of N300,000 vide exhibit D.

According to him, immediately they collected materials and moved to site. They got to the stage where they were due for further payment and they sent exhibit E to the claimant. They were duly paid after inspection by the claimant's engineer. They were paid N104,000.00 on 6/6/95 and they issued the claimant exhibit E I. After this payment they started bringing in materials to commence the 2<sup>nd</sup> phase of work and on a particular day they were chased out of the premises by thugs hired by the 2<sup>nd</sup> defendant. Immediately he and his workers left the premises

he called his client to intimate him of what happened. At the time they left the site, they had about 30 trips of sand valued at N250 per trip; 12 trips of gravel then valued at N600 per trip; 11,800 cement blocks valued at N20 per block; 53 bags of cement valued at N430 per bag; over head tanks for water storage.

At the close of the claimant's case, the 1<sup>st</sup> and 2<sup>nd</sup> defendant's case opened on 7/12/2011 with DW1 Momoh Sani Momoh testifying that he was a Manager with the 1<sup>st</sup> Defendant from 1990 to 1996. The 2<sup>nd</sup> defendant is the chairman of the 1<sup>st</sup> Defendant and presently the Otaru of Auchi. In 1991, there were advertisements in the Daily Times of Nigeria for payment of non-refundable deposit for the sale of Bendel Hotel, Auchi. The sum of N30,000 was paid by the 2<sup>nd</sup> Defendant. In 1993, when Governor Odigie Oyegun was Governor, 2<sup>nd</sup> Defendant was invited to a meeting where he paid the sum of N2.3 million to the 3<sup>rd</sup> Defendant. After the payment was made, they invited and paid prisoners to clear the Bendel Hotel Auchi which was very bushy.

DW2 Yahaya Momoh testified on 3/7/12 that he worked for the 1<sup>st</sup> Defendant as an accountant between 1991 and 1995. In 1993, the defendant company bid for the Bendel Hotel property and payment was made for the property. He submitted that the defendant bid along with a draft for N2.3 million to the office of the chairman on the ad-hoc committee for privatization on 21/5/1993 vide Exhibit H.

DW3 Aziz Ogboanoh testified on 31/7/2012 that he is a welder and Auchi Community project monitoring Chairman. He was called to do the fencing job on the land. They were yet to fix the protectors. They first cleared the bushy site before laying foundation for the fence. They got sand and moulded blocks which was used for the fencing.

2<sup>nd</sup> Defendant Aliuru High breed Momoh testified on 17/10/2012 that in 1991, there was an advertisement by the Bendel State Government through the 3<sup>rd</sup> Defendant inviting bids for listed properties. One of the properties is what is now known as the Royal Palace Auchi. It was formerly called the Bendel State Hotel at the time the property was listed. He further testified that he responded to the bid and was the chairman of the Board of Directors and Chief Executive of the 1<sup>st</sup> Defendant. He paid N30,000 as non-refundable deposit for the bid.

Subsequently the Government changed hands and Governor Oyegun became Governor of Edo State. In 1993, all the properties were re-advertised by the Edo State Government. In 1991, Professor Ovia was the Chairman of the 3<sup>rd</sup> Defendant. The 3<sup>rd</sup> Defendant invited bidders to bid, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants bid for N2 million though there was the reserve price of N2.3 million, 2<sup>nd</sup> Defendant was called upon to pay N2.3 million within 72 hours which he did and was given exhibit H in May 1993. On 30/6/93 he got a letter returning the bank draft to him. The bank draft is exhibit J. The copy of the letter of 29/4/1993 is

exhibit K. The 2<sup>nd</sup> Defendant further testified on 9/12/2013 that it got their knowledge that the claimant was having surreptitious dealings with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and he caused a letter Exhibit K1 to be written to the 3<sup>rd</sup> Defendant where they agreed to pay the reserved price of N2,300,00 (Two million, Three Hundred Thousand Naira). After Exhibit K1 was sent to the 3<sup>rd</sup> Defendant, they got a phone call from the office of the Chairman of the 3<sup>rd</sup> Defendant and was given till 21<sup>st</sup> of May 1993 to pay the reserved price. On the 21<sup>st</sup> of May 1993, a bank draft of N2,3000,000.00 was sent to the 3<sup>rd</sup> Defendant who acknowledge receipt of same. After which 2<sup>nd</sup> Defendant hired prisoners to clear the thick bush within and outside the premises and drove away the cattle and their herdsman who were occupying the premises, while waiting for the necessary documents to be executed in respect of the property. They commenced renovation work on the premises and employed security men to guard the premises. (Underlining mine) The copy of the letter returning the bank draft, the letter of 30/6/93 is Exhibit K2. On the 8<sup>th</sup> day of July, 1993, 2<sup>nd</sup> Defendant wrote to the 3<sup>rd</sup> Defendant asking for an explanation as to how his bid became a counter-offer since that was the amount demanded by the committee in the first instance and that the draft had been lodged. The said letter is exhibit K3. After Exhibit K was sent to the 3<sup>rd</sup> Defendant and there was no re-joinder on the issue from the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, the renovation work continued on the property. (Underlining mine)



The 2<sup>nd</sup> Defendant stated that the claimant did not pay the non-refundable fee and so was not qualified to bid. In Exhibit K sent to the claimant the 3<sup>rd</sup> Defendant stated the price of the property was N3,389,900.00 (Three million Three hundred and Eighty Nine Thousand, Nine hundred Naira only) which meant that the claimant and 3<sup>rd</sup> and 4<sup>th</sup> Defendants had started negotiating before the date of the bidding. The price stated in the claimant's letter was never stated in the letter dated 29/4/1993 sent to the 1<sup>st</sup> Defendant in respect of bidding.

He stated that there was no time the 3<sup>rd</sup> and 4<sup>th</sup> Defendants stated that the price for the property was N2,100,000.00 (Two million one hundred thousand Naira only). The claimant surreptitiously acquired the property. (Underlining mine) The 3<sup>rd</sup> Defendant never informed them that any successful bidder will be given an account number where the money will be paid into before the execution of the necessary document evidencing the sale between the parties. The claimant did not pay into any account because none existed.

The 3<sup>rd</sup> and 4<sup>th</sup> Defendants did not return the bank draft until after six weeks by which time they had taken possession of the land. (Underling mine) He further stated that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants despite being aware of the fact that the claimant did not pay the non-refundable fees and was not a registered Company invited the claimant for the bidding exercise. The 2<sup>nd</sup> Defendant testified that the bidding made by the claimant and the acceptance by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants was

not transparent. The sale of the property to claimant is invalid ab ó initio.

(Underlining mine)

Under cross-examination by ilueminosen the 2<sup>nd</sup> Defendant testified that it is not true that he wrote Exhibit K1 after the claimant had purchased the property. He identified the letter dated 16/5/1993 attached to his deposition Exhibit L. He made a bid of N2.3 million through Exhibit K1. He got to know that the chairman of the 3<sup>rd</sup> Defendant had made known to the claimant the bid that he made and asked them to (Underlining mine) add something and they added N100,000 making their bid N2.1 million. According to 2<sup>nd</sup> Defendant, 3<sup>rd</sup> Defendant gave the claimant two weeks to pay the sum on 15/5/1993. On 15<sup>th</sup> ó 17<sup>th</sup> May 1993 the claimant paid to a commercial Bank at which time the bank was under liquidation. He made an offer of N2.3 million through Exhibit K1. The man who came after him was asked to pay N2.1 million. He protested and wrote a letter to the Governor who asked the committee to look into the matter and (Underlining mine) on 19/5/93 the chairman of the 3<sup>rd</sup> Defendant phoned him to send the draft of N2.3 million within 72 hours. He further testified that he was not given title documents to the property (Underlining mine) but he wrote to the 3<sup>rd</sup> Defendant. He subpoenaed the 3<sup>rd</sup> Defendant but later discovered that the 3<sup>rd</sup> Defendant was committed to the cause of the claimant. There was no gravel or sand deposited on the land.

Under cross-examination by E.E. Akhimie on 4/3/14, 2<sup>nd</sup> Defendant testified that he received a phone call from the Secretary to the Chairman of 3<sup>rd</sup> Defendant asking him to pay N2.3 million within 72 hours that is by Friday 21/5/93. He did not cross check with the Chairman as he had the money to pay. He testified that it was 1<sup>st</sup> and 2<sup>nd</sup> Defendants that applied to join the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to enable them bring some documents to court.

He stated that he issued a draft of N2.3 million to the 3<sup>rd</sup> Defendant dated 19/5/93 and it was received on 21/5/93. He was than aware that by that time the Hotel had been sold to the claimant. The draft was returned to him by the 3<sup>rd</sup> Defendant after about 7 weeks at which time he had taken possession of the premises.

At the close of evidence, the learned counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Defendant Emeka Onuoha Esq. adopted his written address on 3/11/15. He raised two issues for determination viz:

- 1.) Whether this Honourable Court has the jurisdiction to entertain the counter-claim of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants same having been caught up with the statute limitation.
- 2.) Whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have the capacity to apply to set aside a contract they were not party to.

On issue 1, learned counsel submitted that for an action to lie against a Public Officer who acted in the execution of his public duties such an action must

be commenced within 3 months of the action complained of. See section 2 (a) of the Public Officer Protection Law Cap 137, Law of Defunct Bendel State 1976 as applicable to Edo State. He submitted further that any action instituted against a Public Officer outside the statutory period of 3 months as prescribed by the Public Officer Protection Law is barred in law and same cannot stand; as the right of the claimant or injured person to commence the action would have been extinguished by law. See Micheal Obiefuna V Alexander Okoye (1961) 1 ALL NLR Pt. 354.

He submitted that for the provisions of sections 2 (a) of the Public Officer Protection Law to apply to any case, it must be established that the person against whom the action is commenced is a public officer acting in the execution of public duties and that the act done by the person in respect of which the action is commenced must be an act done in pursuance or execution of any law, public duty or authority. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants are public officers within the meaning of the law as held in the case of Alhaji Aliu Ibrahim V Judicial Service Commission of Kaduna State (1998) 64 LRCN 5044 at 5048.

Mr. Akhimie submitted that the act done i.e. the sale of the Bendel Hotel Auchu by the 3<sup>rd</sup> Defendant was done in pursuance or execution of its lawful duty as the body in Edo State then responsible for the privatization and commercialization of Government properties. He submitted that from the pleadings of the parties the cause of action arose in 1993 and the 1<sup>st</sup> and 2<sup>nd</sup>

Defendants filed their counter-claim against the 3<sup>rd</sup> and 4<sup>th</sup> Defendants sometime in 2001 which is about 8 years after the cause of action arose as against the statutory 3 months stipulated by the aforementioned law. He submitted that the plea of statute of limitation is one which goes to the root of an action and therefore raises the issue of jurisdiction which can be raised at any stage of the proceedings or trial, hence this Honourable Court lacks the competency to determine the 1<sup>st</sup> and 2<sup>nd</sup> Defendants counter-claim against the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. He urged the Court to hold that the counter claim of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, against the 3<sup>rd</sup> and 4<sup>th</sup> Defendants is statute barred and same should be dismissed.

On issue 2, Learned Counsel submitted that it is settled law that a contract cannot confer enforceable rights or impose obligations arising under it on any person except parties to it. In other words, it is only a party to a contract that can sue or be sued with respect to the said contract. He relied on *Shuwa V Chad Basin Authority (C.B.A.)* (1997) NWLR (Pt.205) Pg. 550; *Union Bank of Nigeria (U.B.N.) Plc V Sparkling Breweries Ltd & Ors* (1997) 5 NWLR (Pt. 505) 344 at 363. Learned Counsel submitted that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are not parties or privy to the contract that culminated into the sale of Bendel Hotels Auchu in 1993 and as such cannot apply to set same aside as they cannot derive any benefit or liability from same. He submitted further that going by the exhibits tendered, particularly the letter dated 17<sup>th</sup> May, 1993 written by the 1<sup>st</sup> Defendant to the

Chairman of the 3<sup>rd</sup> Defendant clearly show that as at 17<sup>th</sup> May 1993 Bendel Hotel Auchi was no longer available for sale.

In conclusion, Learned Counsel urged the court to resolve the two issues raised in favour of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and dismiss the counter claim of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants against them.

Learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants P.E. Ebuehi Esq. raised three issues for determination in his written address to wit:-

- a.) Whether or not from the evidence on record, the claimant fulfilled the condition precedent and was qualified to be invited by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to bid for the subject matter in dispute.
- b.) Whether or not the 3<sup>rd</sup> and 4<sup>th</sup> Defendants were transparent in their dealings with respect to the property.
- c.) Whether or not the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are entitled to their counter claim in this suit.

Learned Counsel submitted on issue (a) that where there is a condition precedent to the happening of an event the courts have a duty to look into the matter to ensure that the conditions are fulfilled before the said event. He relied on *Inakoju V Adeleke* (2007) 4 NWLR (Pt.1025) 427. He submitted that in the instant case, there is a common ground between all the parties that the condition precedent fixed by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants for the eligibility of any prospective bidder to be invited for the bidding of the property in dispute is the payment of the

non-refundable fee of N30,000 (thirty thousand Naira). He maintained that any party who had not paid the non-refundable fee of N30,000 (thirty thousand Naira) was not eligible to have been invited to bid and/or bid for the subject matter in dispute. He submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants led evidence at the trial to support their pleaded facts, which evidence was neither controverted nor contradicted. Mr. Ebuehi submitted that it is the principle of law that pleadings not supported by evidence go to no issue as pleadings cannot take the place of evidence. He relied on *Ngige V Akunyili* (2012) 15 NWLR (Pt.1323) 343.

He submitted that the evidence of the payment of the non-refundable fee was very crucial and material to the claimant and the 3<sup>rd</sup> and 4<sup>th</sup> Defendants' defence to the counter claim of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Thus the claimant and 3<sup>rd</sup> and 4<sup>th</sup> Defendants were duty bound to convince this Honourable Court that the non-refundable fee was paid before the claimant was invited and allowed to bid for the property. He maintained that in civil matters, the onus of proof shifts from the claimant to the Defendant and vice versa. The onus always rests on the party who would fail if no evidence is adduced on either side. He relied on the case of *Ayorinde V Sogunro* (2012) 11 NWLR (Pt.1312) 460 SC at 482. He argued that in this present case the claimant and 3<sup>rd</sup> and 4<sup>th</sup> Defendants have failed to discharge this burden having regards to exhibit M. Learned Counsel submitted that documentary evidence is the best form of evidence and that where documentary

evidence supports the oral evidence of a party, the court is duty bound to believe such piece of evidence. He relied on the case of *Osibowale V Carribean Finance LTS (2012) ALL FWLR (Pt. 627) 730 C.A.* and Exhibit M.

Mr. Ebuehi submitted on issue (b), that the claimant and the 1<sup>st</sup> Defendant were both invited for the bidding exercise vide Exhibits -Kø and -Mø. He maintained that from Exhibit M this Honourable Court can safely come to the conclusion that the claimant never bid for the property on 11<sup>th</sup> of May 1993. He only concluded negotiations with the 3<sup>rd</sup> Defendant on the 14<sup>th</sup> of May 1993 as shown on Exhibit M. He submitted that the 3<sup>rd</sup> Defendant in showing transparency in the bidding process was bound to disclose the price for the sale of the property to all parties who were invited to bid and not to the claimant alone. According to learned counsel, from Exhibit M the offer price for the sale of property which was only communicated to the claimant was N3,387,900.00 (Three Million, Three Hundred and Eighty Seven Thousand, Nine Hundred Naira).

It was only after the negotiation between the claimant and 3<sup>rd</sup> Defendant that the sum of N2,100,000.00 (Two million, one hundred thousand Naira) was agreed upon. Thus a negotiated amount between the claimant and the 3<sup>rd</sup> Defendant cannot become the offer price fixed by the Edo State Government. Moreover the



claimant was asked to pay N15,000 non-refundable fee as against N30,000 as advertised.

Mr. Ebuehi urged the Court to find in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants were not transparent in the bidding process and as such the purported sale of the property to the claimant was void abinitio.

Learned Counsel submitted on issue :-Cø That if this Honourable Court finds and holds that from the evidence of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and their witnesses that the claimant did not fulfill the condition precedent and was therefore not qualified to be invited by the 3<sup>rd</sup> Defendant to bid for the property, then the only eligible and/or qualified person from the evidence on record is the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. He maintained that the Court can proceed to grant the counter claim of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the light of the evidence on record which was not controverted. He further submitted that if there is no interest to be transferred to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the 3<sup>rd</sup> Defendant would not have collected the N2,300,000.00 draft from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. And kept same for about six weeks before returning it. According to learned counsel it is a principle of civil litigation that parties are bound by their pleadings and a court cannot make out its own case outside the pleadings of the parties. A court should not set up for parties a case different from the one set up by the parties in their pleadings. He cited the case of *Skye Bank Plc V Akinpetu* (2010) 9 NWLR (Pt. 1198) 179; *Balior* (Nig)

Ltd V NAVCON (Nig) Ltd 16 NWLR (Pt.1220) 619. Court must confine its judgment to the determination of the issues raised on the pleadings. FBN V Olaleye (2013) 1 NWLR (Pt. 1334) 102. It is a fundamental principle of law that contractual undertakings must be respected. The rule pacta sunt servanda is the basis of every contractual relationship. He relied on Unitrust Insurance Co. Ltd V AMBICO & SENDIRAN NIG LTD (2012) LPELR 15417 (CA). Mr. Ebuehi submitted that Exhibit L is of no moment; it has no legs and therefore standing on nothing because, the claimant did not fulfill the condition precedent to the sale of the property and the 3<sup>rd</sup> and 4<sup>th</sup> Defendants have not shown that the claimant was excused from paying the non-refundable fee.

He submitted that the claimant failed to prove that he paid for the property. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants stated in their pleadings that prospective buyers were informed that the successful bidder will be given an account number where the purchased money will be paid into before the execution of the necessary documents evidencing the sale between the parties. However there is nowhere in the claimant's pleadings and/or evidence where he stated that he was given an account number wherein he paid the purchased sum as none existed. No bank teller was tendered evidencing such payment at the trial. Learned Counsel submitted that the case before the Court borders on contract and Courts have

consistently maintained that a public officer cannot rely on the statute to evade contractual obligation entered by it.

He relied on *Nigeria Ports Authority V Construzioni Generali Farsura Congefar Spa & Anor* (1974) 1 ALL NLR (Pt. 2) 463. Mr. Ebuehi submitted that assuming the public officers (Protection) Act is applicable to this case; the 3<sup>rd</sup> and 4<sup>th</sup> Defendants cannot be protected under the Act as the law is designed to protect an officer who acts in good faith. It does not apply to acts done in abuse of office with no semblance of legal justification and maliciously done. He relied on the case of *University of Ilorin V Adeniran* (2007) 6 NWLR (Pt. 1031) 498. He posited that the Public Officers Protection Act is not applicable to issues pertaining to land and the issue at hand borders on land.

In conclusion, Mr. Ebuehi urged the Court to dismiss the claims of the claimant and grant the counter-claim of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants against the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

Learned Counsel for the claimant Mr. Ilueminosen raised one issue in his written address to wit:-

Whether from the pleadings and totality of evidence the claimant has not established its claim to be entitled to the reliefs claimed? Learned Counsel submitted that the claimant has by his pleadings and evidence established its title to the property in dispute and therefore entitled to the reliefs claimed. He maintained

in a matter such as this, a party may prove title to a piece of land in any of the following ways:-

- a.) by traditional evidence
- b.) by documents of title
- c.) by various acts of ownership, numerous and positive and extending over a length of time as to warrant the influence of ownership.
- d.) by acts of long enjoyment and possession of land; and
- e.) by proof of possession of adjacent land in circumstances which render it probable that the owner of such land would, in addition be the owner of the disputed land.

He cited *Amadi V Chinda* (2009) 10 NWLR (Pt. 1148), at 130. He submitted that the claimant has proved his title to the land and property by documents of title and act of possession which are at least two of the ways of proving title to land as stated above. He relied on *Olagunju V Adesoye* (2009) 9 NWLR, Pt. 1146 Pg. 225 at 262 ó 263.

He maintained that the claimant by the testimonies of his witnesses, evidence on record and exhibits tendered has proved his title to the land and property in dispute. He posited that the evidence of the claimant was not controverted. What is more, the evidence of DW1 and DW2 do not advance their defence but clearly demonstrates the complete weakness of their defence.

In conclusion, Mr. Ilueminosen submitted that the claimant has proved his case as required by law and that the claimant has suffered both general and exemplary damages, he is therefore entitled to the reliefs sought. He urged the Court to grant all the reliefs sought by the claimant.

The additional written address is a response to the issue (a) raised by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, to wit:-

ö(a) Whether or not from the evidence on record, the claimant fulfilled the condition precedent and was qualified to be invited by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to bid for the subject matter in dispute.ö

Learned Counsel for the claimant Idemudia Ilueminosen Esq., submitted that whereas the 1<sup>st</sup> and 2<sup>nd</sup> Defendantsø in their pleadings did not plead that the claimant did not pay a non-refundable deposit of N30,000 (Thirty Thousand Naira) for bidding, however in paragraph 19 of the witness statement on Oath of the 2<sup>nd</sup> Defendant dated 12<sup>th</sup> June, 2013 he deposed that öThe Claimant did not pay the non-refundable fee. The Claimant was not qualified to be invited for bidding by the 3<sup>rd</sup> Defendant.ö There is no averment in the amended joint statement of defence and counter-claim of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants dated and filed on 27<sup>th</sup> June, 2013 to support this assertion. According to learned Counsel it is the 3<sup>rd</sup> and 4<sup>th</sup> Defendants who ought to complain which they did not and not the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. He maintained that in the Amended Statement of Claim and

paragraph 1 of its reply to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants statement of defence the Claimant averred that they paid a non-refundable deposit of N30,000 along with other interested bidders which the 3<sup>rd</sup> and 4<sup>th</sup> Defendant admitted. Learned Counsel submitted that facts admitted need no further proof. He submitted that the claimant fulfilled the condition precedent, bided and won the bid, paid the consideration for the property and was accordingly given possession of same by the 3<sup>rd</sup> Defendant who executed the relevant title documents in favour of, and handed over all the documents in respect of the property to the claimant. He argued that the case of **Inakoju V. Adeleke (2007) 4 NWLR (Pt. 1025) 427** cited by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the final written address on fulfillment of condition precedent is not applicable. Learned Counsel submitted that issues two and three raised by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are also doomed to fail and same should be dismissed by this Honourable Court as they revolve round the issue of non-payment of non-refundable fee of N30,000 which is not correct. Learned Counsel submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are not entitled to their counter claim in this suit because the 3<sup>rd</sup> Defendant is not bound to accept their bid. It is not also the business of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to question the transparency of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants in their handling of the sales. He submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants by their evidence before this Honourable Court have not paid for the purchase of the property and no money was received from them by the 3<sup>rd</sup> Defendant as

consideration for the property. They were not also led into possession nor were they given possession by the 3<sup>rd</sup> Defendant. Also no title document was executed or given to them on account of the property. According to Mr. Ilueminosen, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants forced themselves into possession of the property.

The facts of this case as led in evidence by the Claimant and 1<sup>st</sup> and 2<sup>nd</sup> Defendants have been thoroughly examined by me. I have read the legal submissions by all the learned counsel. The facts in this case which are not in dispute are viz:-

1. The land in dispute is what was known as Bendel Hotels Auchi lying and situate along old Government Reservation Road, Auchi approximately 4.037 hectares.
2. The property belonged to Edo State Government
3. The Edo State Government called for bid from the public for the outright sale of the Bendel Hotels Auchi through the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

The issues in dispute are viz:-

1. Whether there was surreptitious sale of the property in dispute to the claimant.

2. Whether the 1<sup>st</sup> Defendant offered and 3<sup>rd</sup> Defendant accepted the sale of the said Bendel Hotel and if there was any consideration.
3. Whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendant are trespassers.
4. Whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have a right of action against the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

I have in consideration of the first issue for determination examined the oral and documentary evidence placed before the court. In the extant pleadings of the 1<sup>st</sup> and 2<sup>nd</sup> defendants in paragraph 4 thereof, which the 2<sup>nd</sup> defendant in his statement on Oath paragraph 4 adopted as follows:-

“On the 4<sup>th</sup> day of July, 1991, the 1<sup>st</sup> defendant wrote the 3<sup>rd</sup> defendant signifying her intention to bid for Bendel Hotels at Auchíí .Upon an advertisement published in the daily times of Tuesday 25<sup>th</sup> June 1991.ö He further stated in his paragraph 6. “Nothing was heard in respect of the said bidding until the 29/4/93í .ö

He further stated in his paragraph 6 as follows:-

“ Nothing was heard in respect of the said bidding until the 29/4/93.. The 3<sup>rd</sup> defendant wrote to the 1<sup>st</sup> defendant to appear before the committee on 11/5/93 to bid for the property.ö



By paragraph 5 of the pleading and paragraph 6 of 2<sup>nd</sup> defendant statement on Oath, reliance was placed on Exhibit K which reads inter alia thus:-

Date 29 April, 1993.

õThe Managing Director,  
Globe Mark Ltd,  
2 Azure Crescent,  
G.R.A. Apapa.  
Lagos.

PRIVATISATION OF BENDEL HOTELS, AUCHI

I write with reference to the above-mentioned subject and wish to say that records in the Secretariat of this committee show that you had as early as 1991 shown interest in the management of the Bendel Hotels, Auchi.

2. The purpose of this letter is to request that if you are still interested in managing the hotel you should kindly appear before this Committee on Tuesday 11<sup>th</sup> May 1993 at 12 noon at N0. 53 Boundary Road, G.R.A., Benin City to discuss your application.

A. O. Ohiorenoya  
Director-General

By paragraph 7 of the Amended statement of claim, the Claimant averred that õhe became owner of the property when he bided and purchased it from the Edo State Government, through the state technical committee on commercialization and privatization.õ He gave evidence to this effect and tendered Exhibits A and B in proof thereof. After a careful examination of all the evidence

before me. It is needful to determine whether there is anything surreptitiously done in this transaction as claimed by the 2<sup>nd</sup> defendant in paragraph 31 with particulars given in 1 ó 4 of his statement of Oath. I am satisfied that the sale was published, making it open and from exhibit M tendered by the 2<sup>nd</sup> defendant and reproduced inter alia below as follows:-

Date 29<sup>th</sup> April, 1993

õMr. J. I. Ikoghode,  
Orbit Building Society Limited,  
91, Opebi Road,  
Ikeja, Lagos.

**RE: BENDEL HOTELS**

I write with reference to your letter of 7<sup>th</sup> April, 1993 on the above mentioned subject and wish to request you to forward to Edo State Technical Committee on Privatization and Commercialization of Government owned companies a bank of N65,000 as non refundable fees in respect of Palm Royal Motel, Benin City and Bendel Hotels Auchu as follows:-

- a) Palm Royal Motel Limited, Benin City - N50,000.00 (Fifty thousand naira) and
  - b) Bendel Hotel Auchu ó N15,000.00 (Fifteen thousand naira)
2. I am also to request you to appear before the Technical Committee on Tuesday 11<sup>th</sup> May, 1993 at 12 noon to discuss your proposals to purchase the two hotels. The venue of the meeting is the committee's Secretariat at NO. 53 Boundary Road, G.R.A., Benin City.
  3. I wish, however, to invite your attention to the price for the sale of Bendel Hotels, Auchu communicated to you in letter NO. DCO.261/Vol.111/192 and to say that the correct price is N3,387, 900.00 and not N1,194,000. Please amend your records accordingly.

Signed

A. O. Ohiorenoya  
Director-Generalö

It is therefore evident that the claim by the 2<sup>nd</sup> defendant that the claimant did not pay a non-refundable fee, apart from being unsubstantiated is debunked by exhibit M. The allegation by the 1<sup>st</sup> and 2<sup>nd</sup> defendant that the claimant surreptitiously acquired the property has not been made out. By the definition of surreptitious in Blackø Law Dictionary 8<sup>th</sup> Edition page 1485, öIt is (of conduct) unauthorized and clandestine, stealthily and usually fraudulently done.ö This implies some element of criminality which requires proof beyond reasonable doubt. See section 135(1) of the Evidence Act 2011. In my respectful view the 1<sup>st</sup> and 2<sup>nd</sup> defendants have failed to prove that the purchase of the property by the claimant was surreptitiously done any way.

The question that arises next is whether the claimant has any obligation to satisfy the 1<sup>st</sup> and 2<sup>nd</sup> defendant on his right of purchase when 1<sup>st</sup> and 2<sup>nd</sup> defendants are not owners of the property. If the 1<sup>st</sup> and 2<sup>nd</sup> defendants have any claims or were dissatisfied with the mode of the sale, they ought to have sued the 3<sup>rd</sup> and 4<sup>th</sup> defendants or even the claimant especially after their letter dated 17/5/93 exhibit K1 wherein 2<sup>nd</sup> defendant stated inter alia as follows:-

Re-Acquisition of Bendel hotel Auch

I have been informed that one other person who was interviewed by your committee on Tuesday 11/5/93 after my offer to acquire the hotel for 2 million was discussed, was directed to pay N2.1 million to edge me out.ö From the 2<sup>nd</sup> defendant's own showing in his letter it is clear that he knew that he was edged out by the Claimant's better offer. By the same letter he stated that

öI understand that your committee had directed the payment of the sum of N2.1 million they were requested to offer having become aware of the terms of my offer.ö

I am of the firm view that the 1<sup>st</sup> and 2<sup>nd</sup> defendants at this point were very aware that their offer had not been accepted and that their competitor had a better offer which was accepted by the committee. I therefore find nothing clandestine in the sale. I am further fortified in this finding by the apparent counter offer made by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in Exhibit K1 when 2<sup>nd</sup> defendant wrote inter alia that öI therefore wish to make this offer to buy the hotel for N2.3 million payment to be paid 10 days of your acceptance of this offer.ö (underlining mine)

The claimant tendered exhibits K2 which reads in part as follows:-

ö

30<sup>th</sup> June, 1993

The Chairman,  
Globemark Limited,  
2 Azare Crescent,  
P.M.B. 1265,  
G.R.A., Apapa,  
Lagos ó Nigeria.

**RE:ACQUISITION OF BENDEL HOTEL, AUCHI**

I refer to your letter dated 17<sup>th</sup> may, 1993 and your subsequent letter dated 19<sup>th</sup> May, 1993 under cover of which you forwarded Crystal Bank of Africa Limited Draft for N2.3 million (Two Million, Three Hundred Thousand Naira) being purchaser consideration for Bendel Hotel, Auchi. I regret to say that your Bank Draft for N2.3 Million (Two Million, three hundred thousand naira) which the committee considered as a counter offer was not accepted by the committee because the counter offer came too lateí .ö(underlining mine).

The above has put paid to the 1<sup>st</sup> and 2<sup>nd</sup> defendants allegation of their purchase of the hotel. There was no contract. In the circumstance, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants having failed to challenge the grant of certificate of Occupancy to the claimant and have it set aside, cannot use the perceived flaws in the process to defend the claims before this court as a öswordö. The grant of certificate of occupancy to the claimant remains validly issued and I so hold.

On the 2<sup>nd</sup> issue for determination i.e. whether the 1<sup>st</sup> defendant was offered and 3<sup>rd</sup> defendant accepted the sale of the said Bendel Hotel and if there was any consideration. It is my finding that in determining the 1<sup>st</sup> issue, this 2<sup>nd</sup> issue has

been answered in the negative as sealed by Exhibit K2, wherein the 3<sup>rd</sup> Defendant categorically rejected what it termed the counter offer of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and returned the Bank draft sent belatedly by the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

The 3<sup>rd</sup> issue for determination is whether the 1<sup>st</sup> and 2<sup>nd</sup> defendants are trespassers on the land in dispute. The 2<sup>nd</sup> defendant by paragraphs 13 ó 15 of his statement on Oath admitted entering the land in dispute, õwhile waiting for the necessary documents to be executed in respect of the property.ö Though by 2<sup>nd</sup> July, 1993 they received Exhibit K2 from the Technical Committee to which they sent a reply Exhibit K3 which was in part õto make an appeal to the Executive Governor of the State to investigate the circumstances leading to this impasse reference our letter of 17<sup>th</sup> May, 1993 with a view to ensuring that justice and equity triumph.ö

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants by their own claim, took possession over a land that neither belong to them nor was bought by them even after knowing that there was one who had acquired title. The root of the title of the claimant is established beyond any doubt by Exhibits A, B and F. The certificate of occupancy granted the claimant on 6<sup>th</sup> day of August 1996. Exhibit B gives claimant right to title to the land. He was the person having legal right over the land from that day. The entry unto the land as admitted by 2<sup>nd</sup> Defendant from 1993 while awaiting the intervention the Executive Governor was an actionable wrong as an occupation

against the Edo State Government as the then owner and in possession of the Bendel Hotel until it divested itself of the right of ownership by Exhibit B executed on 6<sup>th</sup> August, 1996. However for a claimant to succeed on a claim for trespass, it must show that it has title and the 2<sup>nd</sup> defendant is remaining on the land inspite of the proof of title by the claimant to his knowledge. In **Okolo V. Uzoka (1978) 4 SC 77 at 78**, the Supreme Court held it is the law and this court has so held times without number that trespass to the land is actionable at the suit of the person in possession of the land.

The Claimant by Exhibits C, D, and E, E1, CW1 proved that they were in de jure possession of the property and was doing some fencing when the contractor and the workers were chased away by thugs of the 2<sup>nd</sup> Defendant. CW2, the contractor's evidence was not discredited in any way. Evidence on as to how they were working on the land but were chased away by thugs hired by 2<sup>nd</sup> Defendants after they got paid on 6/6/95. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants led evidence to the effect that after they made payment they got prisoners to clear the Bendel Hotel Auchu which was very bushy but I find there was no proof as no letter from Prisons Department was tendered. DW3's evidence was that he was called to do the fencing job on the land. They first cleared the bushy site before laying foundation for the fence, they got sand and moulded blocks which were used for fencing. It is noted that he did not mention the use of prisoners to clear. I do not believe that the

1<sup>st</sup> and 2<sup>nd</sup> defendant were first on the land rather I believe they chased the workers put on the land by the claimant and occupied the property. It is therefore my opinion that the claimant was first in possession of the land after his bid was successful. Exhibit F confirms my finding. It is reproduced inter-alia hereunder:-

õ

7<sup>th</sup> January, 1998

The Managing Director,  
Orbit Building Society Limited,  
91 Opebi Road,  
P.M.B. 21507  
Ikeja, Lagos.

PETITION OVER THE FORCEFUL OCCUPATION OF OUR PRIVATISED  
BENDEL HOTELS PROPERTY, AUCHI BY THE OTARU OF AUCHI,  
ALHAJI HIBREED ALIRU MOMOH

I am directed to refer to your letter dated 1<sup>st</sup> December, 1996 on the above subject matter and to inform you that his excellence the military administrator of Edo State after he had exhaustively looked into the matter, has come to the conclusion that the Edo State Government on transferring the land, buildings and structures of Edo Hotels, Auchi to Orbit Limited on 27<sup>th</sup> October, 1993 and issued a certificate of Occupancy on 6<sup>th</sup> August, 1996 which conferred legitimacy and ownership of the property on Orbit Nigeria Limited.

2. Consequently, the Military Administrator has directed that Orbit should be advised to use any legal means at his disposal to defend and repossess his property. (Underlining mine).

Signed  
A. A. E. Ekhayeme  
Permanent Secretary  
Ministry of Commerce & Industry.



From the underlined portion in Exhibit 5, the Government, owner of the land apparently knew that the claimant was in possession hence it was asked to take legal steps to repossess its property.

It is my finding also that the 1<sup>st</sup> and 2<sup>nd</sup> defendants never were in possession but have been in what can be termed occupation of the land in dispute. In the case of **Ezukwu V. Ukachukwu and Anor (2004) 11MJSC 66 at 89**, it is stated that Possession, the admission of which is capable of raising a presumption of ownership of land under section 145 now 146 of the Evidence Act, must be that which amounts to de jure exclusive possession not mere occupation. Occupation in land cases and as found in this case entails a mere physical control of land without the permission of the true owner and a tortious trespass. There is a distinction between de facto possession which is a mere occupation and de jure possession. See **Udeze V. Chidebe (1990) 1 NWLR Pt. 125) 141 at 160 – 162**.

In **Teniola V. Olokunkun (1999) 5 N.W.L.R. (Pt. 602) 280 at 298 per Ayoola J.S.C.**

There may be circumstance in which there are facts which if established by evidence, may justify the exercise of the court's discretion to set aside a grant of right of occupancy. A party cannot, however, rely on such facts as justification for entering on land, subject for the grant, against the wish of

the holder while the grant subsisted and had not been set aside. The facts which may justify the setting aside of a grant of right of occupancy cannot be used as a defence in an action for trespass when the grant which vested exclusive possession in the holder had not itself been set aside. The proper thing to do is to advance those facts in an action to set aside the grant.ö

In the circumstance, the only finding to be made on the status of the 1<sup>st</sup> and 2<sup>nd</sup> defendants is that they are in illegal occupation of the land in question and that makes them trespassers.

Finally, on the question of the counter claim against the 3<sup>rd</sup> and 4<sup>th</sup> defendants, I note that the 3<sup>rd</sup> and 4<sup>th</sup> defendants did not lead any evidence but filed a written address which raised the issue of the fact that the action is not maintainable in law by virtue of the provisions of section 2(a) of the Public Officers Protection Law. The learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants in their written address addressed the crucial matter touching on their competence to file this counter claim. The cause of action in this case arose no doubt in 1993 when the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were invited to a meeting to consider bids vide Exhibit K and may be extended till June, 1993 when the 1<sup>st</sup> and 2<sup>nd</sup> Defendants wrote a letter of appeal vide Exhibit K3. It may even be extended till when Exhibit B was executed. In the case of **Adekoya V. FHA (2008) 6 MJSC 66 at**

73, cause of action was defined as "the operative fact or facts (the factual situation) which give rise to a right of action which itself is a remedial right."

By the decision in **Egbe V. Hon Justice Adefarasin (1987) 1 NWLR Pt. 47) 1**, the Supreme Court stated that in determining whether an action is statute barred or not, the most crucial consideration is when the cause of action arose. A cause of action arises the moment a wrong is done to the plaintiff by the defendant. Limitation of action is determined by looking at the writ of summons or the statement of claim alleging when the wrong was committed which gave the plaintiff the cause of action and by comparing the date on which the writ of summons was filed.

In the case, at hand, I have looked at the counter claim and the file in this case. By order of court made on 22/5/2003 the counter claim against 3<sup>rd</sup> and 4<sup>th</sup> defendants for damages for breach of contract was filed. It therefore follows that for a cause of action that arose between 1993 and 1996, the 1<sup>st</sup> and 2<sup>nd</sup> defendants did not file an action for breach of contract, until 7 to 10 years afterwards. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants are a Government institution or an organ of Government and an officer of Government. As for the 4<sup>th</sup> Defendant the person of the Attorney General is natural while the 4<sup>th</sup> defendant is an artificial person.

In the case of **Offobochie V. Ogoja L.G. (2001) 90 LRCN 2782 at 2798**, **Ayoola JSC** stated as follows:-

“The question whether the Public Officers Protection Law applies to institution is not being raised for the first time in this court. In the recent case of **Ibrahim V. J.S.C. Kaduna State (1998) 64 LRCN5044; 1998) 14 NWLR Pt. 584) 1**, this court held that “any person” in section 2 (a) admits and includes artificial persons. Iguh, JSC at P.36 in that case said:

“It is plain that the definition of the word “person” in the legal sense under the Nigerian Law is not limited to natural persons or human beings only as the appellant now vigorously appear to contend. It clearly admits and includes artificial persons such as corporation, company or anybody of person corporate or incorporate.”

Consequently, this counter claim brought years after the cause of action arose against a body incorporate ie Technical Committee on Privatization and Commercialization, Edo State 3<sup>rd</sup> Defendant and the natural person of the Attorney General, Edo State, 4<sup>th</sup> Defendant outside three months for action taken by them in the cause of their public duty would have been statute barred and not maintainable in law but for the submission of Mr. Ebuehi which I uphold that for the avoidance of doubt, section 2(a) of the Public Officers Protection Act does not apply to cases involving contracts. See the decision in *Federal Government of Nigeria V. Zebra* (2003) 7 MJSC at 20 where it was held that “the public officers protection Act does not apply to causes of action based contract.”

However, I find that the counter claim for breach of contract may be caught by the provisions of Section 4(1) of the limitation law, cap. 89 Laws of Bendel State 1976 applicable to Edo State which provides thus:-

“The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say:-

- a) actions founded on simple contract or on tort;
- b) actions to enforce a recognizance;
- c) actions to enforce an award, where the submission is not by an instrument under seal;
- d) actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture.”

Again if the counterclaim is as to title to the land in dispute as brought into the counter claim amended on 21/6/2013, then my finding is that the cause of action which arose in 1993 or 1996 for this matter commence in 2013 it is clearly out of the statutory period of limitation for land matters, which has twelve years limitation period.

See Section 6(2) of the Limitation Law Cap. 89 Laws of Bendel State 1976 applicable to Edo State which provides thus:-

“No action shall be brought by any other person to recover any land after the expiration of twelve years from the date on which the right of action

accrued to him or, if it first accrued to some person through whom he claims, to that person;

Provided that, if the right of action first accrued to the state through which the person bringing the action claims, the action may be brought at any time before the expiration of the period during which the action could have been brought by the State, or of twelve years from the date on which the right of action accrued to some person other than the State, whichever period first expires.ö

Whether the cause of action arose in 1993 or 1996, by filing the counter claim on 12/5/2003 and the amended counter claim on 12/6/13 their counter claims are clearly caught by the statute of limitation. Therefore from whatever angle this cause in the counter claim is taken it is doomed to fail by the provisions of the limitation law cap 89 Laws of Bendel State 1976 applicable to Edo State in section 6(2) for land matters and section 4(1) for contract.

I, therefore have no hesitation in holding that the counter claim of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is not maintainable and I hereby order it struck out. After all said and analyzed above, I find and hold that the claimant has proved his title to the land in dispute and that the 1<sup>st</sup> and 2<sup>nd</sup> defendants trespassed on the said land, on the preponderance of evidence and balance of probabilities as required in law.

Accordingly, it is ordered as follows:-

- a) I hereby declare that the claimant is entitled to the right of certificate of occupation and possession of the premises, building, developments together with the undeveloped land comprised thereon and known as Bendel Hotels, Auchi, the same lying, situate and being along Old Government Reservation Road, Auchi in Etsako West Local Government Area of Edo State of Nigeria within an area of approximately 4.037 hectares covered by certificate of Occupancy N0 EDSR 12538 dated 6<sup>th</sup> August 1996 registered as Number 28, page 28 in volume B 179 of the Lands Registry, Benin.
- b) It is further ordered that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants jointly and severally pay N5, million as general damages for their acts of trespass on the aforesaid property covered by certificate of Occupancy N0 EDSR 12538 of 6<sup>TH</sup> August 1996.
- c) I order perpetual injunction restraining the defendants by themselves, their servants agents, assigns and/or privies whomsoever and howsoever described from exercising any further right of ownership or possession and/or entering or trespassing or interfering or acting in any manner inconsistent with the rights and interest of the claimant

on the aforesaid property covered by certificate of occupancy NO. EDSR 12538.

d. The claims in paragraphs 2 (a) (b) (C) (d) (e) and 3 are in the nature of special damages and ought to have been specifically pleaded as such with particulars given. The claimants failed to plead specifically for special damages, the claims under those heads are not granted and they are ordered dismissed.

e. On the claim in paragraph 2(g) for exemplary damages against the 2<sup>nd</sup> Defendant. I find the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> defendants in taking occupation of the property since about 1995 to be most reprehensible. They have no right to take the matter into their own hands. The essence of the rule of law is that it should never operate under the use force. To use the concept of self help defined in Black's Law Dictionary 8<sup>th</sup> Edition by Bryan. A. Garner at page 1391.

“An attempt to redress a perceived wrong by one's action rather than through the normal legal process.”

In civil courts exemplary damages were often awarded in such cases of self help to teach the party taking the law into his own hands that tort does not pay. Under section 81 of the Criminal Code Cap 42 Laws of Bendel State 1976 eviction/ entry unto land in circumstances similar to what happened in this case



would constitute an offence of forcible entry. Since either Edo State Government or the Claimant were in peaceable possession of the land it is immaterial whether the 1<sup>st</sup> 2<sup>nd</sup> defendant thought they were entitled to enter the land. See Generally **Military Governor of Lagos V. Ojukwu & Anor (1986) 1NS.C.C. Pg. 304.** In the circumstance, I find that the claimant is entitled to exemplary damages for the unwarranted long occupation of the Bendel Hotel premises after over 20 years.

I award N5 million as claimed as exemplary damages against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

In order to give effect to this judgment, the 1<sup>st</sup> and 2<sup>nd</sup> defendants are ordered to vacate the premises known as Bendel Hotels along old G.R.A. by certificate of occupancy N0. EDSR 12538 and registered as N0. 28 at page 28 in volume B. 179 at the Lands Registry, Benin City within 30 days of this judgment.

Hon. Justice. E. F. Ikponmwen  
J U D G E  
5/2/2016

**COUNSEL**

K.O. Ehigiamusor Esq.,  
With I. Iueminosen Esq.,

For Claimant

A.U. Asemota Esq.,  
With D.O. Orbih Esq.,

For the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Emeka Onuoha Esq.,

For the 3<sup>rd</sup> and 4<sup>th</sup> Defendants

