

IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION, HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, THE HON. JUSTICE E.O. AHAMIOJE,
JUDGE, ON TUESDAY THE 16TH DAY OF DECEMBER, 2014

BETWEEN:

SUIT NO. B/74/2013

- (1) UNIVERSITY OF BENIN, BENIN CITY
- (2) THE GOVERNING COUNCIL OF THE UNIVERSITY OF BENIN, BENIN CITY
- (3) VICE CHANCELLOR, UNIVERSITY OF BENIN

CLAIMANTS

A N D

- (1) THE GOVERNMENT OF EDO STATE
- (2) THE EXECUTIVE GOVERNOR OF EDO STATE
- (3) THE HON. ATTORNEY-GENERAL & COMMISSIONER FOR JUSTICE, EDO STATE
- (4) THE HON. COMMISSIONER, MINISTRY OF LANDS SURVEY AND HOUSING, EDO STATE

DEFENDANTS

J U D G M E N T

The Claimants herein claim the following reliefs against the Defendant jointly and severally as formulated in paragraph 21 of their 2nd Amended Statement of Claim filed on the 3/2/2014 which reads thus:

- (1) A declaration by this Honourable Court that the 1st Claimant is the absolute owner entitled to statutory

right of occupancy of all that landed properties and buildings listed in the within schedule.

(1) Three bedroom bungalow of No. 1, Edo Osagie Avenue, Benin City; (2) Three bedroom bungalow of No. A3, Edo Osagie Crescent, Benin City; (3) Three bedroom of No. 11, Edo Osagie Avenue, Benin City; (4) three bedroom bungalow of No. 13, Edo Osagie Avenue, Benin City; (5) Three bedroom bungalow of No. 15, Edo Osagie Avenue, Benin City; (6) Three bedroom bungalow of No. 17, Edo Osagie Avenue, Benin City; (7) three bedroom bungalow of No. 1, J.S. Jallo Close, GRA, Benin City; (8) Three bedroom bungalow of No. 2, Jallo Close, GRA, Benin City; (9) Three bedroom bungalow of No. 3, Jallo Close, GRA, Benin City; (10) Three bedroom bungalow of No. 1, Edaiken Avenue, GRA, Benin City; (11) Three bedroom bungalow of No. 2, Edaiken Avenue, GRA, Benin City; (12) Three bedroom bungalow of No. 1, Omo-Osagie Avenue, Benin City; (13) Three bedroom bungalow of No. 2, Omo-Osagie Avenue, Benin City; (14) Three bedroom bungalow of No. 4, Omo-Osagie Avenue, Benin City; (15) Three bedroom bungalow of No. 6, Omo-Osagie Avenue, Benin City; (16) Three bedroom bungalow of No. 19, reservation Road, Benin City; (17) three bedroom bungalow of No. 1, Ambrose Alli Avenue, Benin City; (18) Three bedroom bungalow of No. 3, Ambrose Alli Avenue, Benin City.

- (2) An Order of Specific Performance directing and compelling the Defendants to enter into a formal Deed of Assignment with the 2nd Claimant in respect of the properties specified in the Schedule above and to cause an official Gazette to that effect.
- (3) An Order declaring null and void any transfer by the Defendants or their agents of the interest of the 1st Claimant in the properties and items conveyed to it by letters Ref. HE. 2/32/46A dated 23rd September, 1974 to any individual or corporate bodies between 1974 and during the pendency of this suit and after judgment.

- (4) An Order of Perpetual Injunction restraining the Defendants by themselves or through their agents, servants and privies and however from allocating, trespassing, harassing, intimidating, ejecting, interfering with or doing anything inconsistent with the possession and occupation of the Claimants and their Agents, Privies and Representatives.
- (5) Any monetary awards.

Pleadings were duly filed and exchanged by the parties. The Defendants in their Joint Statement of Defence set up a Counter-Claim. In proof of their claim, the Claimants called two witnesses, and tendered Exhibits 'A, B, C1 – C16'; D1 – D5 respectively. The Defendants called a witness in support of their defence, and tendered Exhibits 'E1 – E4' respectively.

For the sake of convenience and good order, I shall summarise the case of the Claimants in a nutshell as follows:- C.W. 1, Mrs. Gladys Ogboghodo is the Registrar of the 1st Claimant, and Secretary of the 2nd Claimant. She adopted her written deposition on oath on the 11/3/2014, wherein she stated that it is on record that by two letters – Ref. HE. 2/32/46 and HE. 2/32/46A dated the 23rd September, 1974, Exhibit 'B', the 1st Claimant was given a gift of properties as itemized in schedule 1 by the Defunct Government of Mid-Western Region absolutely as an institution of higher Education to ameliorate her fast

increasing number of undergraduates. That in the said letter, Exhibit 'B', the 4th Defendant was directed to take steps to get the above-mentioned properties transferred to the University of Benin either by Edict with a schedule of the said properties or an appropriate Gazette Notice indicating the said properties. She further said that the 4th Defendant is aware of the gift by the Defunct Mid-Western Region Government to the 1st Claimant as clearly stated in Exhibit 'B'. That the 4th Defendant being the Ministry in charge of documentation and perfection of documents relating to land and keeping of records of registered instruments was in a position to carry out the directive contained in Exhibit 'B'. She further stated that 1st Claimant through its officers and staff have been in possession of the subject matter of the suit without let or hindrance from the time of Mid-Western Region Government to the defunct Bendel State, and subsequently after the splitting of same into Edo and Delta States. That at the time of sharing of Assets and Liabilities of the aforesaid Defunct States, the properties of the Claimants were left intact. She claimed that sometimes in 2011, the 1st Defendant through its agent, particularly the 4th Defendant started to threaten ownership and interest of the 1st Claimant in the properties with letters including Exhibit 'C5'. She stated that the

claim of the Defendants in the said letter was refuted by the Claimants and enjoined the Defendants to rescind their decision. She averred that when it became obvious that the Defendants were bent on putting into effect their threat, the 1st Claimant instructed its Solicitors of Kola S. Okeaya-Inneh, SAN & CO. to take steps to protect her interest in the properties, which resulted in the publication of caveats in the Newspapers, Exhibits 'C14, C15 & C16' warning unsuspecting members of the public to be wary of any dealings in the subject matter with the Defendants. She stated that their Solicitor wrote letters to the Defendants, prepared Deed of Assignment for execution by the Defendants and the 1st Claimant in respect of the subject matter, and had discussions with the 2nd Defendant on the need to rescind 1st Defendant's decision to quit the 1st Claimant from its properties, which did not yield any positive result. She said that the Defendants threat to quit the 1st Claimant continued unabated as the 1st Claimant's staff and families are being harassed and molested and some of the staff/occupants of the properties are already moving out their belongings in fear to avoid loss and damage to them. She further stated that while this case is still pending, the 4th Claimant received a letter dated the 20/3/13, Exhibit 'C4', from Crown Prince (Ambassador)

Eheneden Erediauwa intimating him of a purported purchase or transfer of plot D24A Edaiken Avenue, G.R.A., Benin City, which is one of the buildings in dispute. That their Solicitors wrote a rejoinder to the said letter of Crown Prince Eheneden Erediauwa vide Exhibit 'C3'. She finally urged the Court to grant the 1st Claimant's reliefs as per the 2nd Amended Statement of Claim.

Cross-examined by Mr. O.A. Omonuwa (SAN), C.W. 1 stated that Exhibit 'B' is a letter endorsed to the Claimants. That it is the document the Claimants based their title to the properties in dispute. She said that Exhibit 'B' was not signed by C.W.2 and the Claimants. That the date the properties were given to the 1st Claimant is not stated on Exhibit 'B' except the date it was written; and the consideration paid for the properties was not specified therein. She denied the fact that the Claimants forged Exhibit 'B'. She said further that dispute had arisen between the parties over the properties before 2011, vide Exhibits 'D1 and D2'. She said that the property in dispute in Exhibit 'D3', the Ruling is one of the properties stated in Exhibit 'B'. That the property in dispute in the said Ruling, Exhibit 'D3' was occupied by the 1st Claimant based on Exhibit 'B'. That the 1st Claimant no longer occupy the property in dispute in Exhibit 'D3' because the 1st Defendant

took over the property from the 1st Claimant before 1981. She stated that the 1st Claimant did not sue the 1st Defendant in Court for taking the property from it. That the properties were given to the 1st Claimant during their teething stage but have now outgrown the stage as at date. She stated that the Vice Chancellor has his official lodge but lives in one of the properties in dispute. That the Federal government has monetized housing allowance of its Senior Officers of the University. That many of the lecturers live in their own houses. She stated that the Claimants sent Exhibit 'D5', the Deed of Assignment to the Defendants to execute in their favour. She said that there is no Government Gazette covering the properties in dispute nor Executive Council decision in respect thereof.

C.W. 2 is General Samuel Osaigbovo Ogbemudia. He adopted his written statement on oath wherein he stated that he was the Military Governor of Defunct Mid-West State between 1967 and 1975, which was later renamed Bendel State and part of which in turn became Edo State. As Military Governor, he combined both Executive and Legislative Powers, as there was no House of Assembly. He made pronouncements and gave orders which were carried out by relevant government functionaries, with Edicts, Gazettes, Circulars and Letters

as the case may be. He said further that in 1969, the Mid-West Government under him set up a Planning Committee for the establishment of a tertiary institution which led to the establishment of the Mid-west Institute of Technology in March 1970, that later became the University of Benin in July 1971. He stated that as a Governor, he assigned about 18 houses and other properties to the University of Benin, (1st Claimant) some in the Government Reservation Area, others in Ugbowo and else where within Benin metropolis. He averred that as far as he can recall, all the properties provided by Government to the University of Benin were not borrowed or loaned to it, but assigned or given to it permanently. That he would not recall assigning any of the University's properties to any other person or authority. That in 1975, the University was taken over by the Federal Government, at the request of the State Government, and all its properties remained hers. He said further that all the properties of the University were not shared between Edo and Delta States when the Defunct Bendel State was divided, because it had become a Federal University and the properties remain hers.

In answer to questions under cross-examination by Mr. O.A.

Omonuwa (SAN), C.W. 2 stated that he established the 1st Claimant and

it has come of age as at date in terms of infrastructural development. That the teething problems no longer exist. He said further that the Federal Government set up a Local Committee which shared the assets of Bendel State between Edo and Delta States but he was not a member of the Committee. That he will not be surprise to hear that the Committee only shared properties of economic value and other properties were left in the States they were situated. He stated that the properties in dispute were assigned to the 1st Claimant and if not shared, they remain the properties of the 1st Claimant. That he had an Executive Council as a Military Governor which was presided over by him. He said that all decisions of the Council were handled by the Secretary to the State Government for dissemination for implementation. He denied the suggestion that all decisions are implemented by the Secretary to the Government. That all letters from his office carries the letter head office of the Governor. That the Ministries also have their letter headed papers. He stated that Exhibit 'B' was not signed by him, and did not represent a letter from his office at that time. He said further that Dr. Okonjo was the Secretary to the Government in 1974, when Exhibit 'B' was written and his signature is not on it.

At the close of the Claimants' case, the Defendants opened their defence and testified through Mr. Austin Joel Esebame Remison, Assistant Director of Lands, Ministry of Lands and Survey, Benin City, Edo State. He adopted his written deposition on oath, further written deposition on oath and 2nd further deposition on oath. He stated that the officials of the 1st Claimant at their teething stage approached the 1st Defendant for help to ameliorate their accommodation problems until such a time that the 1st Claimant will be well established and be able to meet its need. That the 1st Claimant was granted permission and privilege at the pleasure of the 1st Defendant to use the 18 properties listed in the schedule attached to the Statement of Claim to solve its acute accommodation problems, which problems no longer exist as the 1st Claimant is now a well established institution. He stated that the properties were never given as gifts to the 1st Claimant as alleged, but was only permitted to use same as a licensee at the pleasure of the Defendants determinable at will. That at no time did the then Military Governor of Mid-Western Region or any other Governor of the 1st Defendant make a gift of the said properties to the 1st Claimant as alleged. He asserted that the letters dated 23/9/1974,

Ref. HE. 2/32/46 and HE. 2/32/46A, Exhibit 'B' did not convey the said properties to the Claimants as the letters are not instruments of conveyance, and were not authorised by the Governor of then Mid-Western State at that time; and was not approved and sanctioned by the Executive Council. He stated that the said letters did not emanate from the Ministry of Education, but were forged by the Claimants and gave reasons for saying so. He further said that the letters were generated by the 1st Claimant and were never delivered to the office of the 4th Defendant and as such, there could not have been any response to the letters. He said that the Defendants at no time executed any Deed of gift of the said 18 properties in favour of the 1st Claimant, and there is no land instrument transferring title in the properties to the 1st Claimant. He stated that the Claimants are not using the properties for any core educational purpose but use same for residential purposes, collecting rents from its staff who are residing at the properties. He stated that the Claimants have no proprietary or ownership interest in the properties, and the Defendants duly notified the 1st Claimant to vacate the properties as they were in illegal possession, the purpose for the occupation having lapsed. He said that the properties are State land. That upon the receipt of the Claimants' Solicitor's letter, the

Defendants requested for the evidence of the said gifts allegedly made to the Claimant. He stated that the Claimants' Solicitors letters of 25/5/2011, 22/7/2011 and 21/11/2011 Exhibits 'C12, C11 and C8' attested to the fact that no gift of the 18 properties were in fact legally made to the Claimants through any instrument known to law. He stated that the alleged gift of the properties was never perfected by the 1st Defendant in favour of the 1st Claimant as admitted by the Claimants in Exhibits 'D1 and D2'. He said that previous Government of the Mid-West State, Bendel State, now Edo State had on several occasions questioned the occupation and possession of the properties by the 1st Claimant, but after considering the plight of the 1st Claimant allow her to remain in possession at their pleasure pending when 1st Defendant decides to require the properties. He stated that the Defendants having served several Quit Notices on the Claimants to give up possession, in exercise of their rights over the subject properties transferred Plot D24A and more particularly Nos. 1 and 2, Edaiken Avenue, G.R.A., Benin City to His Royal Highness, Eheneden Erediauwa, the Crown Prince. That the said property was transferred to the Crown Prince before the Claimants commenced their action in Court. He stated that the Defendants were neither aware nor party to the

communication between the Crown Prince and the Claimants. That the said letters are documents made during the pendency of this suit. He urged the Court to grant the Defendants' Counter-Claim.

Cross-examined by K.S. Okeaya-Inneh (SAN), learned Senior Counsel for the Claimants, D.W.1 stated that the Ministry which wrote Exhibit 'B' is not shown on top of the letter, but shown at the bottom, R.A. Williams' signature for the permanent Secretary Ministry of Education. That C.W. 2 was the Military Governor of Mid-West State, and after him there were several Military Governors. He said that previous Governments in the past requested for the return of the properties from the Claimants, but could not remember the year. That the Government of Chief Lucky Igbinedion did. That the 1st Claimant did not return the properties but pleaded to be allowed to use them. He denied the fact that the properties in dispute were given to the Claimants as gift by C.W. 2. That the Ministries of Lands and Education existed during the tenure of the C.W. 2 and still exist till date. He stated that the properties in dispute were given to the 1st Claimant as a grant in the 1970s and are still in its possession. He stated that there are records in the Ministry that the properties were given to the 1st Claimant and other Ministries as take-off grants to be returned to

the Government when they stabilize. He said that the Committee on assets sharing between Edo and Delta States did not share the properties in dispute. He denied the fact that before the dispute arose, the properties in dispute were classified as the Claimants properties by their Ministry. He stated that there was no need for the Defendants to respond to the publication in Exhibit 'C15,' because they were on the properties illegally having been given Quit Notices. That he was not aware of Exhibit 'C4' since it was a private letter. He stated that the property was assigned to Crown Prince Eheneden Erediauwa.

That Certificate of Occupancy is usually not Gazetted. He stated that when the Ministry received Exhibit 'C2', they did not reply because the Governor did not give directive to that effect.

At the close of the Defendants' case, and in compliance with the Rules of Court, the learned Senior Counsel for the parties filed their respective written Addresses.

Mr. O.A. Omonuwa (SAN), learned Senior Counsel for the Defendants adopted his written Address where he gave detailed background facts of the case, graphic summary of the evidence of the entire witnesses and the Exhibits tendered at the trial. He thereafter,

distilled the five (5) issues settled between the parties in line with the

Rules of Court as follows:

- (1) Whether the letters dated 23rd September, 1974, with Reference Nos. HE. 2/32/46 and HE.2/32/46A respectively have extinguished the rights or title of the Defendants in the subject matter of this suit and thereby conferred and/or transferred an interest in the properties to the Claimants.
- (2) Whether the letters dated 23rd September, 1974, with Reference No. HE. 2/32/46 and HE. 2/32/46A are instruments of conveyance capable of conveying title in the disputed properties to the 1st Claimant under the Land Instruments Registration Laws applicable to Edo State.
- (3) Whether considering the state of pleadings and the evidence adduced before this Court, the Claimants have established their title to the disputed properties and are thereby entitled to the reliefs sought.
- (4) Whether the alleged gift has by any imagination or interpretation created a Licensor and Licensee relationship between the Claimants and the Defendants.
- (5) Whether the Defendants have sufficiently established by way of evidence to be entitled to their Counter-Claim.

Arguing issues one and two together, learned Senior Counsel submitted that Exhibit 'B' has not extinguished the right or title of the Defendants specifically the 1st Defendant in the subject matter, and

consequently did not transfer or confer any title or interest in the subject properties on the Claimants.

Learned Senior Counsel stated that the Claimants contended that the letters are the instruments through which the Military Government of the Defunct Mid-Western State under the administration of General S.O. Ogbedudia (RTD), C.W. 2 made a purported gift of the disputed properties to the 1st Claimant. He submitted that it is impossible in law for the said letters to convey any proprietary interests in the disputed properties to the 1st Claimant because the said letters do not qualify as an instrument of conveyance within the intent of section 2 of the Land Instruments Registration Law Cap. 81 Laws of the Defunct Bendel State 1976, applicable to Edo State which defines instrument. He argued that for a document to qualify as an instrument under the law, it must be a document that deals with land in the State, and the document must be one through which the grantor confers, transfers or extinguishes his right, title or interest in land in favour of the grantee. In other words, the document must be one executed as between the grantor and the grantee.

He submitted that Exhibit 'B' utterly failed to meet the requirement of the law. He argued further that Exhibit 'B' was

allegedly written by the Ministry of Education to the Ministry of Lands and Housing as a proposal to take steps to get the properties transferred to the University of Benin either by an Edict or an appropriate Gazette. That Exhibit 'B' by itself is not a transfer instrument and also not the legal means, by which gifts are made, if at all. He submitted that State Land Law gives no power to the Governor to make a gift of State land to any person whether corporate or individual, but only empower him to sell State land for consideration.

Learned Senior Counsel posited that the letters, Exhibit 'B' were not correspondences between the State Government and the 1st Claimant, and so cannot be a document affecting land. That Exhibit 'B' was not in fact addressed to the 1st Claimant. He submitted that the Ministry of Lands and Housing did not respond to Exhibit 'B', and denied ever receiving same.

He submitted that Exhibit 'B' was forged by the Claimants with the intention of unlawfully appropriating the properties to the 1st Claimant. He further submitted that Exhibit 'B' is not a registrable land instrument capable of being relied upon by the Claimants in proof of their allegation that the said letters extinguished the title of the 1st

Defendant in respect of the disputed properties in favour of the 1st Claimant.

Learned Senior Counsel reiterated that Exhibit 'B' was neither authorized nor issued by the then Military Government of the Mid-Western State. That no where in Exhibit 'B' was the Mid-West Government shown to be in the capacity of a “donor” intending to transfer its interests in the said properties to the 1st Claimant as “donee” in compliance with the provisions of the law.

In considering the contents of the first letter Ref. HE. 2/32/46, he argued that the intent of the letter was not to make any form of gift of the said properties to the 1st Claimant as alleged, but a mere proposal or appeal by the Ministry of Education to the Ministry of Lands to take necessary steps that would have transferred the disputed properties to the 1st Claimant. He further argued that from the evidence, steps were never taken by the Ministry of Land to effect any transfer of the said properties to the 1st Claimant. That the Ministry of Lands and Housing refused to take steps to effect the transfer of the said properties because the directive was not issued by the State Government, and that the Ministry of Education has no lawful authority under any known

law to transfer state land or interest in it to person or authority, and referred to sections 1 and 2 of the Land Use Act.

He submitted that the said letters are inadmissible in law as evidence affecting the disputed properties because they were not registered under section 16 of the Land Instruments Registration Law. He argued that the said properties were never a gift from 1st Defendant to the 1st Claimant, but the 1st Claimant was allowed to use the properties and return same to the 1st Defendant, when it had stabilized. He submitted that to constitute a valid gift, the transfer of the properties must be voluntary without the intention of same reverting or returning to the donor. He cited *ORIDO V. AKINLOLU* (2012) 9 NWLR PT. (1305) 370 AT P. 387 PARAS A – B and *ANYAEGBUNAM V. OSAKA* (2000) 3 SC 1.

Learned Senior Counsel referred to paragraph 6 of the 2nd Amended Statement of Claim and submitted that Exhibit 'B' is not what the Claimants say it is.

He stated that C.W. 2 disowned Exhibit 'B' by stating that it did not in any way represent his office, and was not on any letter-headed paper as against the established system where all government

departments only use the official letter-headed paper to communicate between one Ministry and another.

He stated that C.W. 2 agreed that the decision to transfer state properties to any person or authority can only be taken at the State Executive Council.

He argued that Exhibit 'B' was a letter from one Ministry to another and that the Ministry of Lands has denied ever receiving Exhibit 'B'. He submitted that the 1st Claimant based its title on Exhibit 'B' which is meaningless and of no use as far as proving title to the subject property is concerned.

He submitted that the Claimants premised their Claim on gift by the Defendants on Exhibit 'B'. That the letter, Exhibit 'B' is not a deed of gift. That by Exhibit 'C11' tendered by the Claimants showed that the deed of gift was never executed in favour of the Claimants by the Defendants.

Learned Senior Counsel also submitted that when a party pleads purchase or gift as his root of title as in this case, he either succeeds in proving the purchase or gift or he fails. That having failed to prove the title pleaded, it will be wrong to turn round and rely on acts of possession, and cited BALOGUN V. AKANBI (1988) 1 NWLR (PT. 70) 301.

He further argued that where title pleaded was not proved, it will be clumsy to consider acts of possession as such acts of possession becomes act of trespass, and cited DA COSTA V. IKOMI (1968) 1 ALL NLR 394, IDUNDUN V. OKUMAGBA (1976) NMLR 200; MOSES OKHUOROBO & ORS. V. CHIEF EGHAREVBA AIGBE (2002) 3 SC (PT. 1), 141 (2002) LPELR 2449 SC.

Learned Senior Counsel argued that the evidence of the Claimants is clear that a deed has not been perfected, and cited OKWUDILI OKONTA & ANOR. V. CHIEF (BARRISTER) IKENNA EGBUNA (2013) LPELR 2125 (CA).

He submitted that the Claimants have failed to prove their root of title, and cited UDE V. CHIMBO (1998) 12 NWLR (PT. 577) 169 AT 172 – 173 SC. He contended further that both the facts and the law are against the Claimant concerning the vesting of the subject properties, and cited NASIRU V. ABUBAKAR (1997) 4 NWLR (PT. 497) 32 CA. He submitted that property does not pass to an assignee where a deed of assignment is not executed. That possession cannot ground title unless the radical title relied upon is proved by the Claimant, and cited OKWUDILI OKONTA & ANOR. V. CHIEF (BARRISTER) IKENNA EGBUNE (SUPRA).

On the need for the donee of a gift of land to accept it, he cited ANYAEGBUNAM V. OSAKA (SUPRA), and submitted that the Claimants have failed to show that they accepted the gift as in their evidence admitted that there was no gift perfected by the 1st Defendant in their favour, and referred to Exhibits 'D1 and D2'.

He submitted that in Exhibits 'C12 and C11', the Claimants' Counsel stated that the letter Ref. HE. 2/32/46 and other legislations and Edicts have vested the de-jure and de-facto interest in the disputed properties on the 1st Claimant, but that the said legislations and Edicts were not produced and tendered in evidence, and cited OMOTAYO V. C.S.A. (2010) 16 NWLR (PT. 1218) AT 31 PARA. A. He submitted that the letters dated 23rd September, 1974 Exhibit 'B' were forged on the grounds listed at page 21 of the written Address.

On what amounts to forgery, he relied on sections 464(a) and 465 of the Criminal Code of Bendel State, Cap. 48 Laws of Bendel State as applicable in Edo State.

He submitted that the Claimants failed to call the purported makers of the letters, Exhibit 'B', the Ministry of Education to support the authenticity of the documents.

He also submitted that C.W. 1 was not the maker of the letters and she can only give inadmissible hearsay evidence as to its contents. That C.W. 1 did not also lay foundation as to the absence of the maker of the letters, and cited N.B.C. PLC. V. UBANI (2009) 3 NWLR (PT. 1129) 512 AT 541, PARAS. C – D, CHIBEX INDUSTRIES LTD. V. OCEANIC BANK INTERNATIONAL (NIG.) LTD. (2005) 14 NWLR (PT. 945) 392 AT 411.

He urged the Court not to attach any weight to the letters as they were forged by the Claimants. He finally urged the Court to hold that the letters dated 27th September, 1974 with Rf. HE. 2/32/46 and HE. 2/32/46A Exhibit 'B', are not instruments of conveyance that can convey title in the disputed properties on the 1st Claimant, and resolve these issues in favour of the Defendant.

On issue three, learned Senior Counsel adopted his arguments in support of issues one and two.

He submitted further that he who asserts, must prove, and cited sections 131 and 132 of the Evidence Act (2011) as amended, and LEWIS LTD V. AKHIMIEN (1976) 7 SC 157. That in an action for declaration of title to land, the Claimant must succeed on the strength of his own case, and cited OTUKPO V. JOHN (2012) 7 NWLR PT. 1299, 357 AT 376 – 377 PARAS. H –A.

He contended that the Claimants have relied on two of the five ways of proving title to land, that is, on production of documents of title and acts of long possession and enjoyment of land. That the Claimants in proving their title to the said properties in dispute tendered Exhibit 'B' and nothing more, and cited IDUNDUN V. OKUMAGBA (1976) NSCC 445. He referred to the definition of the term “execution” as contained in the Black’s Law Dictionary, 9th Edition, and cited ADELAJA V. FANOIKI (1990) 2 NWLR (PT. 131) AT 167 PARA A. He also referred to section 4 of the Statute of Fraud Act 1677, IBEKWE V. NWOSU (2011) 9 NWLR (PT. 1251) 15 PARA F and section 2 (1) of the Contracts Law, Cap 43 Laws of Bendel State 1976 applicable to Edo State, and Section 67 of the Property and Conveyancing Law cap. 129 Laws Bendel State which states that all land transactions must be in writing.

He submitted that the Claimants have the burden not only to produce their title document upon which they rely, but also to prove that same was duly executed by or on the authority of 1st Defendant.

He submitted that Exhibit 'B' did not pass due process and the process of passing title was never commenced or completed.

He submitted that all lands in each of the State of the Federation are vested in the Governor of that State who holds it in trust and to administer it for the benefit of all Nigerians, and referred to Section 1 of the Land Use Act and Section 6(1) of the State Land Law, Cap 156 Laws of Bendel State as applicable to Edo State; and SAVANNAH BANK OF (NIG.) LTD. & ANOR. V. AMMEL O. AJILO & ANOR. (1989) 1 ALL NLR 26.

He also argued that the Governor of a State cannot turn State land into an object of charity to be shared to persons like the Claimants in disregard of the provisions of the law. That the 1st Defendant only granted the 1st Claimant license to use the said properties for the common benefit of its people until such a time, and that the purpose for the grant has been fulfilled, and referred to section 1 of the Land Use Act and section 6(4) of the State Land Law.

He submitted that by Section 77 of the Property and Conveyancing Law, Cap. 129, all conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed.

He stated that Exhibit 'B' does not fall within the recognized exceptions to Section 77(2) as such, it is void.

He submitted that Exhibit 'B' is caught by Section 2(1) of the Contract Law Cap. 43 Laws of Bendel State as applicable to Edo State and that it cannot ground the Claimants' cause of action as it was not duly executed or registered as required by law.

He submitted that it is settled law that proof of title to land by giving evidence of long possession and enjoying of same will not stand where another shows a better title to the land, and relied on AWARA V. ALALIBO (2002) 18 NWLR (PT. 799) 484 AT 532 PARAS A – B, ADELAKUN V. ISEOGBEKUN (2003) 7 NWLR (PT. 819) 295 AT 311 PARAS. C – F and CHIEF O. ODOFIN V. ISAAC (1984) 11 SC 72 AT 116.

He submitted that in the State Land Law, time does not run against the State, and relied on Sections 29, 30 and 31 of the State Land Law, cap 156, Laws of Bendel State 1976, as applicable to Edo State. On whether acts of long possession and enjoyment are more of a defence or offence, he cited IDUNDUN V. OKUMAGBA (SUPRA) AT 454 LINES 30 – 40 and section 45 (now section 143) of the Evidence Act

which deals on rebuttable presumption of ownership of land by acts of possession.

He submitted that the Claimants' contention that they have been in undistributed possession of the disputed properties since 1974, and exercised acts of ownership over same go to no issue since they have failed to establish any title in the subject properties. That the Claimants admitted that they derived possession from the 1st Defendant who has proved a better title to the disputed properties, and cited DA COSTA V. IKOMI (SUPRA) AT 398.

He submitted that it is trite law that parties are bound by their pleadings and that parties must be consistent in stating their case as well as proving it, and cited ADEKEYE V. ADESINA (2010) 18 NWLR (PT. 1225) 449 AT P. 473 PARAS. D – F, BALIOT NIG. LTD. V. NAVCON (NIG.) LTD (2010) 16NWLR (SIC) . 619 AT P. 633 PARS D – G, OJIUGO V. OJIUGO (2010) 8 NWLR (PT. 1198) 1 AT P. 20 PARAS. F – H, OSHIOMHOLE V. AIRHIAVBERE (2013) 7 NWLR (PT. 1353) 376 AT P. 394 PARAS. B – C, AJIDE V. KELANI (1985) 2 N.S.C.C. 1298 AT P. 1316 PARAS. 40 – 45 and REGISTERED TRUSTEES OF NATIONAL ASSOCIATION & ORS. V. MEDICAL AND HEALTH WORKERS NIGERIA & ORS. (2008) AFWLR (PT. 412) P. 1013 AT P. 1029, 1053.

He argued further that the Claimants were not consistent in proving their case, in that in paragraphs 5 and 6 of their Joint Statement of Claim they averred that the said properties were gift to them by the 1st Defendant, but during trial gave evidence to the contrary by tendering Exhibit 'C2', their proposed deed of assignment dated 2011, which was not executed by the parties therein. That by Exhibit 'C2', title in the disputed properties were never transferred to the Claimants by the Defendants, and relied on U.N.I.C. LTD. (1993) 3 NWLR (PT. 593) 17 AT P. 29 PARAS. D – F. That the inconsistency rendered the claim of the Claimants unbelievable and unreliable, and cited AKPAN V. BOB (2010) 17 NWLR (PT. 1223) 421 AT 523 – 524 PARAS. H – B; and MINI LODGE LTD. V. NGEI (2007) WRN (VOL. 4) 54 AT 74 – 75. He urged the Court to resolve this issue in favour of the Defendants.

On issue four, he adopted his argument on issues 1, 2 and 3 in support of this issue.

Learned Senior Counsel submitted that Exhibit 'B' merely created a licensor and licensee relationship between the 1st Defendant and the Claimants who are liable to be removed, their license having been revoked.

On the definition of a license, he placed reliance on the cases of OSAMWONYI V. OSAMMWONYI (2011) 8 NWLR (PT. 1249) 328 AT P. 341 PARAS. B – C, KEYAMO V. FOLORUNSO (2011) 9 NWLR (PT. 1252) 209 AT P. 240, 241 PARA. H, and Section 4 of the State Land Law of the Defunct Bendel State 1976. It was submitted that Exhibits 'C5, C13, E2 and E3' constitute revocation of the Claimants' license to use the subject properties. It was further submitted that the Claimants' response to the revocation of the 1st Claimant's license is by challenging the title of the 1st Defendant via Exhibits 'C14, C15 and C16' which did not improve their position as licensees. That the gazette referred to in Exhibit 'C1' was not produced at trial.

He submitted that it is settled law that where a party relies on a document in proof of his title to land, he must tender the document in evidence, as extrinsic evidence of its contents is inadmissible, and cited OMOTAYO V. C.S.A. (SUPRA) P. 31 PARA A.

He submitted that the Claimants are mere licensees of the disputed properties, and section 170 of the Evidence Act prevents a licensee from denying the title of his landlord or licensor, and cited OKUNOWO V. MOLAJO (2011) 3 NWLR (PT. 1235) 434 AT P. 450 PARAS. H – A.

He contended that Exhibits 'C8, C10, C11 and C12' written by the Claimants' Counsel to the Defendants amount to a challenge and a denial of the 1st Defendant's title to the disputed properties. He further submitted that this suit constitutes a challenge to the 1st Defendant's title and that the Defendants are entitled to an order of forfeiture of the license earlier granted the 1st Claimant in respect of the disputed properties.

Finally on this issue, he submitted that the Claimants are trespassers by remaining on the land, and cited *EGBUNA V. ONUANA* (2007) 10 NWLR (PT. 1042) 298, and urged the Court to resolve this issue in favour of the Defendants.

On issue five, he adopted his arguments canvassed on issues 1 – 4, and submitted that the Defendants have by credible evidence established their Counter-Claim.

He argued that the 1st Defendant has a right to transfer part of her property to the Crown Prince by Exhibit 'E1' and that the transfer was done before the Claimants instituted this action on the 15th of February, 2013, so this case is not caught by the doctrine of lispendis. He stated the conditions under which the doctrine of lispendis will

apply, and cited E.F.P. CO. LTD. V. N.D.I.C. (2007) 9 NWLR (PT. 1039) 216; BUA V. DAUDA (2003) 13 NWLR (PT. 838) 657.

He submitted that the Defendants have proved their Counter-Claim by the evidence given, tendered, and urged the Court to resolve this issue in favour of the Defendants.

In conclusion, he urged the Court to dismiss the Claimants' claim with costs and grant the Defendants' Counter-Claim.

On his part, Mr. K.S. Okeya-Inneh (SAN), of learned Senior Counsel for the Claimants in his written Address gave a succinct summary of the facts of the case and the evidence led at the trial as can be gleaned from pages 1 – 6 of his written Address.

He reproduced the five issues settled between the Claimants and the Defendants at trial which needs no further repetition.

Arguing issues one and two together, learned Senior Counsel submitted that the letters dated 23rd September, 1974, with Ref. Nos. HE. 2/32/46 and HE. 2/32/46A, have extinguished the rights or title of the Defendants in the subject matter of the suit and thereby conferred interest in the properties on the Claimants, and referred to the

provisions of the opening paragraph of the first chapter of the Land Use Act, 1978, Cap 5, Laws of the Federation of Nigeria, 2004.

Learned Senior Counsel submitted that the case and claim of the Claimants are as per Exhibit 'B' which are the documents that communicated the gift (properties) in dispute from the 1st Defendant acting through the 2nd Defendant to the 1st Claimant as witnessed by the 4th Defendant and others, and the viva-voce pronouncement/proclamation of C.W. 2, Dr. S.O. Ogbemudia which he reiterated in his evidence on oath and oral testimony and during cross-examination. That by the said letters, Exhibit "B", the Defendants conferred interest in the properties on the Claimants.

He submitted that the Land Use Act, 1978, Cap. L5 LFN 2004 extinguished any interest in the properties already owned by the Federal Government of Nigeria in any state before 1978. He submitted that the properties in dispute were given as gifts by the 1st Defendant to the 1st Claimant who accepted them and immediately took possession of same. He relied on OGUEJIOFOR ANYAEGBUNAM V. OSAKA (2000)3 S.C. P. 1 AT 14 LINES 25 – 35; DEWAR V DEWAR (1975) 2 ALL ER, 728 AT 732.

On conditions for a valid gift, he cited ACHODO V. AKAGHA (2003) FWLR (PT. 186) 612. It was submitted that once a gift of land or properties has been made and accepted, the grantor cannot thereafter lay claim to it, and cited OGUEJOFOR ANYAEGBUNAM V. OSAKA (SUPRA).

It was further submitted that a gift is proven when there is evidence of actual handing over of the land (property) as in this case where the 1st Defendant acting via the 2nd Defendant gave the properties in dispute to the 1st Claimant who accepted them and took physical possession of same. He cited MADAM ALICE ORIDO V. THEOPHILUS AKINLOLU (2012)9 NWLR (PT. 1305) 370 AT 375 RATIO 7.

On the meaning and import of a completed gift, he relied on the Black's Law Dictionary. He submitted that the act of giving "Gift" as done by the 1st Defendant, acting through the 2nd Defendant, in the presence of the 4th Defendant as per Exhibit 'B' was an act of a completed giving "Gift" as the gifted properties were no longer under the control of the Defendants. That the gift as per Exhibit 'B' in favour of the 1st Claimant does not admit of any compensation or payment of whatever nature. He referred to the definition and import of compensation in Black's Law Dictionary.

He submitted that Exhibit 'B' will not be vitiated by the failure of the relevant agencies of the Defendants to carry into effect the public pronouncement or proclamation of the C.W. 2 who at that time had the authority to make such pronouncement or proclamation. That the failure to either transfer the completed gift items to the 1st Claimant through an Edict or Gazette was solely the act or omission of the Defendants and the law will not allow the Defendants to benefit from their own error, and cited ALHAJI (CHIEF) AYOTUNDE SERIKI V. SEFIU OLUKOREDE ARE & ORS. (1999) 3 NWLR (PT. 595) 469 AT 472 RATIO 4; OGUEJOIFOR V. OSAKA (SUPRA) and DEWAR V. DEWAR (SUPRA).

It was also contended that Exhibit 'B' being C.W. 2 pronouncement as the Military Governor could not be on a Letter headed paper as what was sent to them was a copy which was intended for their information, and that it was correspondence from a Ministry to another Ministry of the 1st Defendant that was admitted in evidence by D.W.1, and also the fact that R.A. Williams who was a member of staff of the 1st Defendant at the material time was not denied or dislodged to have been so or have acted in the capacity he did.

He submitted that the alleged fraud by the Defendants was not established, and urged the court to act on Exhibit 'B' being a document establishing the absolute gifts in favour of the Claimants. He argued that Exhibit 'B' being a document in existence for more than twenty (20) years, there is a presumption of law in favour of such documents, and relied on FRANCIS ADESUWA AYANWALE V. OLUMUYIWA ODUSAMI (2011) 18 NWLR (PT. 1278) 328 AT 333 AND 334 RATIOS 8, 9 AND 10; Section 155 of the Evidence ACT, 2011, ACT NO. 18 LFN & SHUAIBU V. MUAZU (2014) 8 NWLR (PT. 1409) 207 AT 245 RATIOS 53 AND 54.

He finally submitted on these issues that the claim of the Claimants which is founded on Exhibit 'B' and acts of long possession, does not in any way diminish the case of the Claimants but fortify same, and relied on CHIEF OYELEKAN & 2 ORS.V. OLADOSU AKAN & ORS. (1988) 1 NWLR (PT. 70) 301 AT 302, RATIO 2, and FRANCIS ADESINA & ANOR. V. OLUMUYIWA ODUSAMI (SUPRA) AT 334 RATIO 11. He urged the Court to resolve these issues in favour of the Claimants.

On issue three, learned Senior Counsel adopted his submission on issues 1 and 2 above, and submitted that the Claimants have led concrete, credible and acceptable evidence in line with their pleadings

before the Court to be entitled to the reliefs sought. That cases of this nature are won on the strength of the case of the Claimants base on the preponderance of evidence led in Court in support of pleadings filed. He submitted that the Claimants' title is vested in them by the proclamation of C.W. 2 whose capacity and office rest with the Executive and Legislative functions at the material time. That the said pronouncement/proclamation was a gift absolute in favour of the Claimants. That the evidence of C.W. 2 and the pleading were not dislodged or discredited by the Defendants; thus the Claimants have led cogent and credible evidence by relying solely on Exhibit 'B'. He cited MRS. OLUWASEUN AGBOLA V. UNITED BANK FOR AFRICA PLC. & 2 ORS. (2001) 11 NWLR (PT. 12 58) 375 AT 383 – 384 RATIOS 3 and 4.

He further submitted that courts are enjoined to act on relevant and credible evidence led by the parties, as the Claimants have done considering Exhibit 'B', which states the purport, act and intention of Government as to the gift that the properties conveyed to the Claimants were made as absolute gifts to them.

That this Court has a duty to evaluate the evidence led by the parties, by considering every aspect of the evidence, and cited ALHAJI

JIMOH AJAGBE V. LAYIWOLA IDOWU (2011) 17 NWLR (PT. 1276) 422 AT 429 – 430 RATIOS 8 and 9.

Learned Senior Counsel adopted his submissions on issues 1, 2 and 3, and urged the Court to exercise its discretion to order specific performance in favour of the Claimants against the Defendants as Exhibit 'B' is a completed act of absolute gift for which further acts and actions as directed by Exhibits 'C – C16' (with the exception of Exhibits 'C4, C5 and C6') can be predicated upon, which goes to show that the Claimants have come with clean hands to equity as in this case, and cited DR. LIMAN V. MOHAMMED (1999) 9 NWLR (PT. 617) 116 AT 122; MOHAMMED MUSTAPH V. USMAN ABUBAKAR & ANOR. (2011) 3 NWLR (PT. 1233) 123 AT 128.

He argued that as at the time Exhibit 'E1' (Certificate of Occupancy) was issued to the Crown Prince came into existence; the Claimants were already and still in actual physical possession of the gifted properties since 1974, and cited MR. BANKOLE MANKINDE & ORS. V. PRINCE GODWIN OMAGHOMI (2011) 5 NWLR (PT. 1240) 249 AT 255 RATIO 5. He urged the court to resolve this issue in favour of the Claimants.

On issue Four, the Learned Senior Counsel submitted that by the Claimants' pleading, testimonies and Exhibits tendered in Court, they have established that Exhibit 'B' was an absolute gift in perpetuity and does not in any way give rise to licensor and licensee relationship between the Claimants and the Defendants, and cited FELIX ROLAND OSAMWONYI V PAUL OSAMWONYI (2011) 8 NWLR (PT. 1249) 328 AT 332 RATIO 3. He urged the court to resolve this issue in favour of the Claimant.

On issue Five, he submitted that the Defendants/Counter-Claimants have failed to prove their entire counter claim; thus are not entitled to the reliefs sought therein. That the Defendants' Counter-Claim is caught by statute of limitation law as the disputed properties were gifted to the Claimants over forty years ago. That the action of the Counter-Claimants by way of Counter-Claim in 2013 of the subject matter against the Claimants/Defendants' interest is statute barred by reason of section 6(1) of the limitation law. He submitted that the Counter-Claimants being aware that the Claimants/Defendants have been in possession of the properties in dispute since 1974, and laid no claim of ownership or title to same until the 2010 (about 30 years) has extinguished their rights of action, if any to recover their purported

interest in the landed property. He relied on Section 6(1) of the Limitation Law and ATALOYE V. GOV. ONDO STATE (2014) NWLR (PT. 1410) 623 RATIOS 2 and 3, and urged the Court to hold that the Counter Claim is statute barred.

In the alternative, learned Senior Counsel argued that the Defendants are caught by the doctrine of laches as they have shown unreasonable delay in issuing Exhibit 'E3' and their attempt to lay claim to the properties in dispute, and cited CHUKWU & ORS. V. AMADI (2009) 3 NWLR (PT. 427) 56 AT 61 RATIOS 4 and 5, AGBARA V. AMADRA (1995) 7 NWLR (PT. 410) 712 AT 720 RATIOS 17 and 18. He submitted that the Claimants have been in possession since 1974 till date, a period of about forty (40) years, and relied on OKUNADE V. OLAWALE (2014) 10 NWLR (PT. 1415) 207 AT 223 RATIO 16.

He submitted that the Defendants have acquiesced to the absolute gift made by the Defendants to the Claimants. That since the making of Exhibit 'B' in favour of the Claimants, the Claimants have exercised full ownership and possessory right by maintaining, renovating and redesigning the said properties to modern standard yearly to the knowledge of the Defendants.

He posited that Ugbowo Campus is one of the items in Exhibit 'B', and that the Claimants had applied and was granted a (Certificate of Occupancy (C of O) in respect of Ugbowo Campus, and cited OGUNKO V. SHELLE (2004) 11 NWL (PT. 725) 659 AT 662, 665 RATIOS 1 to 8.

He further submitted that Exhibit 'E3' purporting to evict Claimants is not legally tenable in that as at 1975 the said properties were already owned by the Federal Government by virtue of the Land Use Act, 1978 which conferred ownership of properties already owned by the Federal Government on the 1st Claimant. He relied on the opinion of Hon. Justice Niki Tobi in his book titled Cases and Materials on Nigeria Land Law "(1st Edition, 1992, Reprinted in 1997)" Chapter 10 p. 170 at 175 PARA. 2 lines 11 to 14, and BUKAR V. BASHIR (2014) 11 NWLR (PT. 1417) 68 AT 71 RATIO 3.

He urged the Court to hold that the disputed properties cannot be taken away now from the Claimants.

He finally submitted that the Claimants have proved their claim to entitle them to the reliefs sought, while the Defendants have failed to prove their Counter-Claim by credible evidence. He urged the Court to grant the Claimants' claim and dismiss the Defendants' Counter-Claim.

Replying on point of law, MR. O.A. Omonuwa, (SAN) submitted that Exhibit 'B' is not a completed act as stated but a document which specifically anticipates the taking of further or other steps by the Ministry of Lands and Survey. That an act is completed when there is nothing left to be done. He further argued that Exhibit 'B' being a document speaks for itself as to what it is and what status it has, and cited KANMODE & ANOR. V. DINO & ORS (2008) LPELR 8405 (CA).

He submitted that the Claimants are bound by their pleading and evidence adduced in support of same, and parties cannot therefore change their case at Address stage when they stated that the Defendants did not request for evidence of the alleged gift, and referred to Exhibits 'C1 and C13'.

He submitted that the burden of proving the existence of any Official Journal or Gazette evincing the absolute gift of the land in question rests squarely on the Claimants and failure to discharge same is fatal to their claim.

He argued further that the subject properties were at no time vested in the Federal Government, but formed part of State Land owned by the Defunct Mid-West State which became that of the present Edo-State, the 1st Defendant. That the Land Use Act does not

apply here. That the Claimants in their pleading and evidence adduced stated that the said property was state land which was given to them by the then Military Government as a gift.

He submitted that State Land can only be vested by Deed, and until that is done, the 1st Defendant is not divested of the legal estate in the property. He submitted that a gift can only be made by the owner and CW2 was not the owner of the subject properties.

He submitted that defence of laches, acquiescence and limitation law are special defences which must be specifically pleaded and proved. That the Claimant did not raise any of the defences in their pleading, and cited ISO V. ENO (2003) 12 NWLR (PT. 835) 595, ANYAORAH V. ANYAORAH (2001) 7 NWLR (PT. 711) 185 – 186, ATUCHUKWU V. ADINDU (2012) 6 NWLR (PT. 1297) 534 AT 568.

He argued that the Claimants cannot rely on the defences and lead evidence in proof of same, therefore, they cannot raise them for the first time in their final written Address, and relied on ACN V. HARRISON (2012) LPELR 8004.

He argued further that the Defendants' Counter-Claim is not caught by laches and acquiescence. He submitted that the State is not barred from bringing action to recover state land, and referred to

section 31 of the State Land Law Cap. 156, Laws of Bendel State 1976.

He submitted that the limitation law does not apply where the act of trespass is a continuing one as in this case, and cited *ORIORIO V. OSAIN* (2012) 16 NWLR (PT. 1327) 560 AT 580.

He posited that acts or evidence of long possession can only be used as an equitable defence in an action for declaration of title, thus, it can only be allowed to be used as a shield or tool for defence and never as a sword or cause of action for a claim for declaration of title, and cited *MOGAJI V. CADBURY NIG. LTD. & ORS.* (1985) 7 SC 59 AT 159.

He further submitted that unless the origin of a title is valid, the length of possession does not ripen invalid title of a trespasser to a valid ownership, and cited *THOMAS V. HOLDER* 12 WACA 78 AT 80, *JEGEDE V. GBAJUMO* (1974) 10 SC 183 AT 187, *MOGAJI V. CADBURY NIG. LTD.* (SUPRA), *OLAYIOYE V. OSO* (1969) ALL NLR 271 AT 275. He urged the Court to dismiss the Claimants' reliefs.

It is the principle of law that in every civil case, the onus of proof is always on the party who asserts, and he has a duty to prove his case on credible and cogent evidence. Where a party fails to discharge the burden, he cannot therefore be entitled to judgment.

See: *EHOKOR V. OSAYANDE* (1992) 6 NWLR (PT. 249) 524;

UMEANIA V. EMORDI (1996) 2 NWLR (PT. 430) 384.

The standard of proof required is proof on the balance of probability and not beyond reasonable doubt as in criminal cases.

See: OBIAZIKWOR V. OBIAZIKWOR (2008) 8 NWLR (PT. 1090) 551 AT 569.

In the instant case, five issues for determination were settled between the parties in line with the Rules of Court which have been reproduced earlier in this judgment. It is, my view, that the said issues adequately captured the issues in controversy between the parties. I propose, therefore, to consider and determine the case on those issues.

Let me reiterate that the Claimants' claim is for declaration to entitlement to statutory right of occupancy over the 18 properties in dispute, order of specific performance, an order declaring null and void one of the properties given to an individual, and an order of perpetual injunction.

It is settled that it is from the Claimants' statement of claim that the Court can ascertain the method or methods of proof that the Claimants are relying on in proof of their title to the properties in dispute.

In the Claimants' joint Amended Statement of Claim dated and filed on the 3/2/2014, they averred in the following paragraphs thus:

- (4) The Claimants state that during the teething stage of the 1st Claimant, it was faced with acute accommodation problems both for the staff and its students.
- (5) To ameliorate these problems, the then Military government of the defunct Mid-Western region under Brigadier General Samuel Osaigbovo Ogbemudia (Rtd.) gave eighteen (18) buildings and items specified in the schedule to this claim to the 1st Claimant.
- (6) Claimants' claim that the said gift was conveyed to the 1st Claimant vide two letters dated the 23rd day of September, 1974 with Reference No. HE. 2/32/46 and HE. 2/32/46A, respectively. Claimants shall rely on the said letters and shall contend very strongly that the gifts were outright, and same conveyed ownership of the properties on the 1st Claimant.
- (7) The Claimants aver that the letter of Gift directed the Ministry of Lands and Housing (4th claimant) to immediately ratify the gift by gazetting same.

It is demonstrably clear from the aforesaid paragraphs that the Claimants seek to establish their title to the properties in dispute through a gift allegedly conveyed to the 1st Claimant by the two letters dated the 23rd day of September, 1974, tendered and admitted as Exhibit 'B'. The Defendants in their 2nd Amended joint Statement of Defence denied the said gift and claimed that the 1st Claimant was granted permission and privilege to use the 18 properties at their

teething stage to solve their acute accommodation problems, which no longer exist.

It is trite law, that the Claimants, have the burden of proving to the satisfaction of the Court that they are entitled on the evidence brought by them or adduced to the declaration of title claimed. In this regard, they must succeed on the strength of their case and not on the weakness of the Defendants' case.

See: DIKE V. OKOLOEDO (1999) 10 NWLR (PT. 623) 359

OLOKOTINTIN V. SARUMI (2002) 13 NWLR (PT. 784)
307

OKHUAROBO V. AIGBE (2002) 13 NWLR (PT. 771) 29

ADENIRAN V. ALAO (2001) 18 NWLR (PT. 745) 361.

Now, the Claimants in proof of their claim as earlier stated called CW1 and CW2. CW1, Mrs. Gladys Ogboghodo in her written deposition averred that from the available record in their custody, the disputed properties were given to the 1st Claimant as absolute gift by the 1st Defendant vide Exhibit 'B'. She stated that the 4th Defendant as the Ministry in charge of documentation and perfection of documents relating to land was mandated to take steps to transfer the disputed properties to the 1st Claimant either by an Edict or Gazette. She also stated that the 1st Claimant through its officers and staff have been in

possession of the subject matter without let or hindrance from 1974 until 2011, when the 1st Defendant through its agents began to threaten the ownership and interest of the 1st Claimant with letters including Exhibit 'C5'. She averred that when it became obvious that the Defendants were bent on putting into effect their threat, they took steps to protect their interests in the properties by causing caveats to be published in the Newspapers, Exhibit 'C4, C5 and C16', writing letters to the Defendants, prepared Deed of Assignment for execution by the Defendants, and had discussions with the 2nd Defendant which yielded no positive result.

CW2, General S.O. Ogbemudia in his witness deposition claimed that he as a Military Governor of Mid-West State assigned about 18 houses in dispute and others to the 1st Claimant. He averred that all the properties assigned to the 1st Claimant were not loaned or borrowed to it, but given to it permanently.

On their part, the Defendants testified through D.W 1, Mr. Austine Joel Esebame Remison. In his witness deposition, he averred that the Military Government of General S.O. Ogbemudia, CW2, did not make a gift of the properties to the 1st Claimant. That the 1st Claimant was only granted permission and privilege at the pleasure of the 1st

Defendant to use same to solve its acute accommodation problems, which no longer exist. He stated that Exhibit 'B' did not convey the properties to the Claimants as the letters were not authorised by C.W. 2 nor sanctioned by the State Executive Council. He stated that the letters, Exhibit 'B' were forged by the Claimants to convert the properties to their use. He stated that the Claimants' solicitor's letters dated 25/5/2011, 22/7/2011 and 21/11/2011, Exhibits 'C12, C11 and C8' attested and admitted the fact that no gift of disputed properties were in fact legally made to the Claimant through any land instrument known to law. That the alleged gift of the properties was never perfected by the 1st Defendant in favour of the 1st Claimant as admitted by the Defendant in Exhibits 'D1 and D2'.

Let me quickly say that I have carefully and painstakingly considered the entire evidence adduced by the parties (both oral and documentary). I have also given detailed consideration to the brilliant and illuminating written Addresses of learned Senior Counsel for the parties, and the plethora of judicial authorities cited therein.

It is pertinent to state that from the pleadings oral and documentary evidence before this Court, the issues for consideration are simple, straightforward and presents no complexity whatsoever.

It is, my view, that Exhibit 'B', being the fulcrum upon which the Claimants' case is substantially hinged, it is quite apposite at this stage to reproduce same herein under thus:

23, September, 74

HE.2/32/46

The Permanent Secretary,
Ministry of Lands & Housing,
Benin City.

Government Gifts of Building and other Items
Of Property to the University of Benin

A. Staff Houses

- (1) 18 Bungalows in the GRA as follows:-
 - (i) 9 in the area of Edo-Osagie Avenue, GRA;
 - (ii) 2 behind the Health Office, GRA;
 - (iii) 6 Oregbeni type between the 5th and 6th Avenue, GRA;
 - (iv) 1 USAID type off Aideyan Avenue, GRA.

B. Other Properties

University of Benin Permanent Site, Ugbowo.

2. Since it is your Ministry that is directly in charge of all government buildings, it would be appreciated if you could take steps to get the above-mentioned properties transferred to the University of Benin either by an Edict with a schedule of the said properties or an appropriate Gazette Notice indicating the said properties.
3. An early action will be greatly appreciated, please. A copy of this letter is being endorsed to the Registrar, university of Benin for his information and necessary action, please.

(R.A. WILLIAMS),
For Permanent Secretary,
Ministry of Education.

The next question that naturally arises from Exhibit 'B' is: what is a Gift in law?

A Gift inter-vivos has been defined by the Supreme Court in the case of ANYAEGBUNAM V. OSAKA (2000) 5 NWLR (PT. 657) 386 AT 400 thus:

“A Gift inter-vivos is an act whereby something is voluntarily transferred from the true possessor to another person, with full intention that the thing shall not return to the donor, and will full intention on the part of the receiver to retain the thing entirely as his own without restoring it to the giver. The essential thing is complete when the done accepted it”

I shall return to this later in the Judgment.

Let me now consider issues 1 and 2 as formulated by learned Senior Counsel for the parties to the effect whether Exhibit 'B' are instrument of conveyance capable of conveying title in the disputed properties to the 1st Claimant, and whether same have extinguished the rights or title of the Defendants in the subject – matter, and transferred same to the Claimants?

Now, by virtue of section 2 of the land instrument Registration Law of Bendel-State, instrument means a document affecting land in the State whereby one party usually called the grantor confers,

transfers, limits, charges, or extinguishes in favour of another party called the grantee any right or title or interest in land in the state.

It is settled law that a gift which conveys some interest in property or land must be by a deed or an instrument of conveyance.

The next issue is whether Exhibit 'B' is an instrument or Deed which confers interest in the disputed properties on the Claimants?

Let me quickly say that it is settled law, that when constructing a document in dispute between the parties, where the words used are clear and unambiguous, there is no need to give them any other meaning than their ordinary, natural and grammatical construction would permit unless that would lead to absurdity.

In other words, the operative words in a document are to be given their simple and ordinary grammatical meaning, and not to read into the document what is not there.

See: IHUNWO V. IHUNWO (2013) 8 NWLR (PT. 1357) 550

IKENNE LOCAL GOVT. V. WAPC LTD. (2011) 12 NWLR (PT. 1261) 223 AT 247

ADETAYO V. ADEMOLA (2010) 15 NWLR (PT. 1215) 169

N.N.P.C. V. LUTIN INVESTMENT LTD. (2006) 2 NWLR (PT. 965) 506.

In the case of ZENITH BANK PLC. V. EKEREUWEN (2012) 4 NWLR (PT. 1290) 207 AT 236, the Court of Appeal held thus:

“The approach of the Court to a matter of documentary evidence is that document must be interpreted as a whole and not in parts or pockets convenient to a party, and a party is not to pick and choose extracts there from that is convenient to his case.”

See: AKINBISADE V. STATE (2006) 17 NWLR (PT. 1007) 187 at 204.

It is a trite law that in determining whether a document is an instrument or not, the Court will look at the contents of the document and determine what the document is supposed to achieve.

In the case of GBINIJIIE V. ODJI (2011) 4 NWLR (PT. 1236) 103 AT 129, AMINA ADAMU AUGIE (JCA) stated the principle in a more admirable manner thus:

“In determining whether a document is an instrument or not, the Court will look at the contents of the document and determine what the document is supposed to achieve. If the transfer of the right or title to the land is effected by the document, it is an instrument, but if it is evidence of some transaction future or past, the document is more likely a memorandum; which in the context of land cases is a piece of evidence showing that some other transaction has taken place or will take place in respect of the land, and that some other things will be done to confer a legal title or right on the land.”

See: UZOEKWU V. IFEKANDU (2001) 17 NWLR (pt. 741) 49.

Now, a careful and critical examination or perusal of Exhibit 'B', demonstrably shows that it is a letter allegedly written by the Ministry of Education to the Ministry of Lands and Housing. In other words, Exhibit 'B' was not written to the 1st Claimant but merely endorsed to it for its information and necessary action. It is, also manifestly clear, that Exhibit 'B' does not contain or state any commencement date for vesting of the title in the disputed properties on the 1st Claimant. Exhibit 'B' was equally not signed by the 1st Claimant or any of its Agent or privy or principal officer. It was also not signed by the Military Governor (CW2) who was alleged to have given the properties to the 1st Claimant.

As earlier stated, in determining whether a document is an instrument or not is by looking at its content to determine what the document is suppose to achieve. Surely, the word "instrument" is not contained in Exhibit 'B'. However, the relevant paragraph in Exhibit 'B' that is germane for consideration is paragraph 2 which reads thus:

"Since it is your Ministry that is directly in charge of all government buildings, it would be appreciated if you could take steps to get the above-mentioned properties transferred to the University of Benin either by an edict with a schedule of the said properties or an appropriate gazette Notice indicating the said properties."

It is palpably clear from the extract aforesaid that Exhibit 'B' itself is not the transfer instrument of the 18 properties from the 1st Defendant to the 1st Claimant. It is clear, that Exhibit 'B' is a letter or correspondence written by the Ministry of Education to the Ministry of Lands and Housing as a proposal to take steps to get the properties transferred to the 1st Claimant either by an Edict, or appropriate Gazette. There is no doubt whatsoever that the Government intended to give the properties to the 1st Claimant for their use in Exhibit 'B'. It is also beyond controversy that Exhibit 'B' itself did not go beyond mere intention of the Government of Mid-West State to make a grant of the properties to the 1st Claimant for their use without transferring the title or interest in the said properties to the 1st Claimant. Simply put, Exhibit 'B' clearly shows that some other things will take place or will be done to confer the legal title or right in the said properties on 1st Claimant.

Therefore, when the Claimants went into possession of the properties on the basis of Exhibit 'B', the law only ascribed possession and not the legal title to the 1st Claimant. The legal title to the properties remained in the 1st Defendant until a formal conveyance or Deed of Gift is made in favour of the 1st Claimant.

It is in recognition of this fact, that the Claimants wrote a letter, Exhibit 'C12' to the 4th Defendant requesting for a copy of the Edict or Gazette Notice transferring the legal title in the properties to the 1st Claimant; and also prepared a Deed of Assignment Exhibit 'C2' to be executed by the 1st Defendant in favour of the 1st Claimant.

Before I conclude on these issues, let me quickly say that the fact that the 4th Defendant denied ever receiving Exhibit 'B' from the Ministry of Education does not automatically make Exhibit 'B' a forged document. It is also trite law that if the Commission of a crime by a party to any proceedings is directly in issue in any proceedings civil or criminal, it must be proved beyond reasonable doubt. See section 135(1) of the Evidence Act 2011.

It is, my considered opinion that the Defendant led no iota of evidence in proof of the alleged forgery or that the Claimants fraudulently generated the said letter, Exhibit 'B'.

It is settled law that the failure to call the maker of a document, as in the instant case, does not make Exhibit 'B' a forged document. The failure, in appropriate cases would render the document inadmissible.

In the result, it is my humble but firm view, that Exhibit 'B' itself is not an instrument of conveyance or a Deed of Gift capable of conveying or which conveyed title in the disputed properties to the 1st Claimant, nor did it extinguish the rights or title of the Defendants in the subject matter. I, therefore resolve issues 1 and 2 in favour of the Defendants against the Claimants.

That takes me to issue No. 3 which is whether the Claimants have established their title to the disputed properties.

It is manifest as can be gleaned from the 2nd Joint Amended Statement of Claim, that the Claimants predicated their title on Exhibit 'B' and long possession. They led evidence through C.W. 1 and C.W.2 in proof of their title to the disputed properties. The Claimant as earlier observed relied solely on the strength of Exhibit 'B' which they stated is an absolute gift from the 1st Defendant to the 1st Claimant through C.W.2, Dr. S. Ogbemudia. The Defendants on their part, through D.W. 1 denied the said gift and claimed that the 1st Claimant was only granted permission and privilege to use the 18 properties at their teething stage to solve their acute accommodation problems.

It is trite law that mere production of an alleged document of title or deed of conveyance over a piece of land or landed property does not

automatically entitle a party to title to the land or property. In other words, before production of document of title is admitted as sufficient proof of ownership, the court must satisfy itself that:-

- (a) The document is genuine or valid;
- (b) It has been duly executed, stamped and registered
- (c) The grantor has the authority and capacity to make the grant;
- (d) The grantor has in fact what he proposes to grant; and
- (e) The grant has the effect claimed by the holder of the instrument.

See: AYORINDE V. KUFORJI (2007) 4 NWLR (PT. 1024) 341,
DARBOR V. ABDULLAHI (2005) 7 NWLR (PT. 923) 181,
AGBOOLA V. U.B.A. PLC. (SUPRA) AT 413.

It is patently clear from my earlier finding that Exhibit 'B' itself is not an instrument of conveyance or a Deed of absolute Gift capable of conveying or which conveyed title in the disputed properties to the 1st Claimant. It is not a duly executed conveyance between the 1st Defendant and the 1st Claimant, but a letter or correspondence between the Ministry of Education and the Ministry of Lands and Housing. It was also not stamped nor registered as a land instrument as required by law. Simply put, it was not a letter written to the 1st

Claimant by the 1st Defendant, and therefore conveyed or conferred no title on the 1st Claimant. In the result, I hold that Exhibit 'B' did not meet the necessary legal requirements of a title document capable of transferring interest in land, and therefore conveyed no title on the 1st Claimant.

It is, settled law, that where a party is admitted to be in possession of land in litigation between the parties, the onus is on the other side which is asserting the contrary to prove that he is not the owner by showing a better title to the land.

See: EZUKWU V. UKACHUKWU (2004) 17 NWLR (PT. 902) 227

ATANDA V. ILIASU (2013) 6 NWLR (PT. 1351) 529 AT 558.

It is, also trite law, that where a Claimant fails to discharge the burden of proving his root of title to the land, he is not entitled to the declaration sought. He can also not fall back on long possession and acts of ownership. He must first have a valid root of title to be able to claim ownership or acts of it.

See: EMENYONU V. UDOH (2000) 9 NWLR (PT. 671) 25, RATIO 3 AT 27.

In the instant case, in the face of my finding that Exhibit 'B' itself is not an instrument of conveyance of which the 1st Claimant Claimed it

derived its title to the properties in dispute from the 1st Defendant, the alleged possession by the Claimants cannot avail against the 1st Defendant. In other words, the Claimants having failed to prove valid title to the properties by Exhibit 'B', cannot now rely on acts of long possession and acts of ownership in proof of same.

Before I am done with this issue, I wish to state that the Claimants were not consistent in proving their case. In one breathe, they averred and led evidence that the properties were absolute gift, vide Exhibit 'B' from the 1st Defendant to the 1st Claimant which was the basis of their title to the properties in dispute. That the 1st Defendant's title or interest in the properties was extinguished by Exhibit 'B' which was a completed gift of its interest in the properties to the 1st Claimant. Yet, in another breathe, C.W. 1 tendered Exhibit 'C2' which was a proposed Deed of Assignment dated 2011 sent to the Defendants for execution, which is a tacit admission that the properties in dispute were never transferred to the 1st Claimant contrary to their pleading and evidence that the properties were transferred to the 1st Claimant by Exhibit 'B' itself, thereby extinguishing the 1st Defendant's interest. It is my, humble view, that the Claimants cannot approbate

and reprobate at the time thereby creating the hybrid nature of a bat – neither a bird nor a mammon at the same time.

Worse still, their evidence that Exhibit 'B' was an absolute gift and a long concluded or completed transfer of the interest in the properties to the 1st Claimant by the 1st Defendant in 1974, is at variance with their relief in paragraph 2 for an order of specific performance. I say no more on this issue.

Consequently, I therefore resolve issue, No. 3 in favour of the Defendants against the Claimants.

I now turn to issue No. 4 which is whether the alleged gift, Exhibit 'B' created a licensor and licensee relationship between the parties.

In the instant case, it is note worthy that the Claimants traced their root of title to the 1st Defendant. In proof of their Claim, as earlier stated, they relied solely on the alleged gift, Exhibit 'B' as the document of title to the disputed properties. In my earlier finding, I held that Exhibit 'B' itself is not an instrument of conveyance as required by law capable of transferring interest in the disputed properties to the Claimants. Therefore, when the Claimants went into occupation of the properties, on the basis of Exhibit 'B' on the

assumption that it transferred the interest in the properties to the 1st Claimant, the law ascribes possession and not the legal estate to the 1st Claimant. Thus, the 1st Claimant cannot be regarded as a trespasser, but a licensee in the eye of the law. The Claimants remained in the properties at the pleasure and permission of the 1st Defendant until the license is revoked. It is, therefore my view, that the relationship created between the 1st Claimant and the 1st Defendant on the basis of Exhibit 'B' is at best that of a licensor and a licensee.

I shall finally deal with issue No. 5 which is whether the Defendants have sufficiently established by way of evidence to be entitled to their counter-claim.

It is, settled law, that a Counter-Claim is a cross-action with the Claimant becoming the Defendant to the Counter-Claim. Therefore, the onus of proof of the counter-claim rests upon the Counter-Claimant (i.e. Defendants). They must lead evidence in support of the Counter-Claim in order to succeed.

See: OBMAMI BRICKS & STONE (NIG.) LTD. V. A.C.B. (1992)
3 NWLR (PT. 229) 260, RATIO 16;

ZENITH INTERNATIONAL LTD. V. VICKDAB & SONS
(NIG.) LTD. (2011) 2 NWLR (PT. 1231)337.

The Defendants in proof of the counter-claim testified through D.W.1. D.W. 1 testified that the properties in dispute belong to the 1st Defendant. He testified that the Claimants were granted permission to use the properties by the 1st Defendant at their teething stage to solve their acute accommodation problems which no longer exist. That the properties were not given to the 1st Claimant as absolute gift. He testified that the Claimants were given Notices to quit the premises vide Exhibits 'C5, E2 and E3'.

The Claimants on their part, stated through C.W. 1 that the properties were given to the 1st Claimant as absolute gift by the 1st Defendant vide Exhibit 'B'. That by Exhibit 'B', the 1st Claimant acquired title to the said properties. That the transfer of the subject matter of Exhibit 'E1' to the Crown Prince, Eheneden Erediauwa was done during the pendency of the suit.

I have myself carefully considered the evidence led by the Defendants/Counter-Claimants in proof of the Counter-Claim, and the evidence of the Claimants/Defendants including the avalanche of documentary Exhibits tendered. At the risk of repetition, the 1st Claimant claimed that it derived its title to the disputed properties from the 1st Defendant by a gift made vide Exhibit 'B'. Exhibit 'B' itself is not

an instrument of conveyance or a Deed of Gift capable of conveying or which conveyed interest or title in the properties to the 1st Claimant. Thus, the Claimants taking possession of the properties on the basis of Exhibit 'B' alone are licenses which license was revoked by the Notices given to them by the Defendants vide Exhibits 'C5, E2 and E3'. It is my, view that, the legal interest or title to the properties remained with the 1st Defendant/Counter-Claimant and was not transferred to the 1st Claimant by Exhibit 'B'. Therefore, being legally vested with the proprietary interest in the properties, the 1st Defendant/Counter-Claimant has the legal right to transfer the properties contained in Exhibit 'E1' to the Crown Prince Eheneden Erediauwa. I hold and find as a fact that the transfer in Exhibit 'E1' was done before the Claimants filed this suit, and therefore not caught by the doctrine of lispensis.

Let me say and quickly too that the defence of laches, acquiescence and limitation law are special defences which a party relying on same must specifically plead and prove. It is remarkable to note that no where in the Claimants' pleading was the defences specifically pleaded. In other words, the Claimant did not raise any of the defences in their pleading, and therefore cannot rely on same.

The defences were raised for the first time by learned Senior Counsel

for the Claimants in his written Address. Aside from this, it is trite that limitation law does not bar the state from bringing an action to recover state land. I therefore, hold that the counter-claim is not caught by laches and acquiescence.

I further hold that the transfer of the property in Exhibit 'E1' to the Crown Prince Eheneden Erediauwa is valid and legal.

In the result, I hold that there was no valid conveyance of the disputed properties from the 1st Defendant to the 1st Claimant vide Exhibit 'B' which is not an instrument of conveyance known to law. I hold that the Defendant/Counter-Claimants have successfully proved their counter-claim on the balance of probability as required by law.

On the whole, I hold that the Claimants have failed woefully to prove their claim on the preponderance of evidence as required by law. Accordingly, the Claimants' claim is hereby dismissed in its entirety as devoid of merit.

I hold that the Defendants/Counter-Claimants have successfully proved their counter-claim as required by law. Accordingly, judgment is hereby entered in favour of the Defendants/Counter-Claimants as per their Counter-Claim in the following terms:-

- (1) A declaration that the 16 properties stated in the schedule attached hereunder and numbered 1 – 16

forms part of State land belonging to the 1st Defendant.

- (2) I accordingly direct the 1st Claimant and person claiming by or through her to vacate the 16 properties stated in the schedule hereunder and give up possession forthwith to the Defendants.
- (3) I hereby declare that the sale and transfer of Plot D24A Edaiken Avenue GRA, Benin City (i.e. No. 1 & 2 Edaiken Avenue) to His Royal Highness Eheneden Erediauwa (Crown Prince) by the 2nd Defendant is valid and subsisting.

I award costs of N20, 000 in favour of the Defendants against the Claimants.

E. O. AHAMIOJE,
JUDGE.
16/12/14.

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