

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 G. O. IMADEGBELO – JUDGE
ON WEDNESDAY THE 20TH DAY OF JULY, 2016

BETWEEN:

SUIT NO. B/409/2010

1. MR. SOLOMON UGIAGBE
2. MR. SAMSON OSEMWENGIE
3. MR. MARVEL EKHATOR
(suing for themselves and as
Representatives of Evbuowe,
Evbuoghodo and Idemudia
Communities of Oredo Local
Government Area of Edo State)

..... CLAIMANTS

AND

1. MR. UYIEKPEN ALE
(The Odionwere of Ulemo
Community)
2. MR. JOHN ERHENYI
(Defending for themselves and as
Representatives of Ulemo Community
of Oredo Local Government Area
of Edo State)

DEFENDANTS

J U D G M E N T

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The Claimant's claimed in paragraph 6 (a) – (c) of their statement of claim as follows:-

- (a) A declaration that the Plaintiffs by virtue of Edo State of Nigeria Gazette No.51 Vol.17 dated 6th December 2007 are the ones entitled to the statutory right of occupancy of all that parcel of land at Ogba Forest

Reserve containing an area of about 30.315 hectares situate and lying at Oredo Local Government Area of Edo State within the Benin Judicial Division of this Honourable Court which is particularly described in the said Gazette as de-reserved land for Evbuowe, Evbuoghodo and Idemudia Communities by the State Government and delineated in the said survey plan as pleaded in paragraph 12 above.

- (b) An order of perpetual injunction restraining the defendants, their servants, agents, privies and/or any person claiming through them or whatsoever from entering or remaining upon the said piece or parcel of land in purported exercise of any right in relation to the possession, use and occupation of the said land or any part thereof in derogation of the Plaintiffs' right or interest as vested by the State Government vide Edo State of Nigeria Gazette No.51 of 6th December, 2007 Vol. 17 as delineated in litigation survey plan as pleaded in paragraph 12 above.
- (c) The sum of N10,000.00 (Ten Thousand Naira) only being general damages for the defendants' various acts of trespass on the land in dispute.

In proof of his case the Claimant testified, the previous evidence of Surveyor F. lyawe was admitted in evidence as Exhibit 'B'. The Defendants called three witnesses.

P.W.1 is Solomon Ugiagbe. He is the 1st Claimant, he lives at No.6 Isibor Street, Off Adesogbe Road, Benin City. The Claimants are members of Evbuowe, Evbuoghodo and Idemudia communities of Oredo Local Government Area. The land in dispute is about 30.315 hectares forms part of the area acquired for forest reserve in the 19th century. Their forefathers deforested the land for farming. Edo State Government on 2/6/2006 de-reserved the land in dispute for the Claimants for industrial development. Sometime in 2009 the defendants trespassed on the land by building illegal structures on same. An area was carved out for the defendants but the land in dispute is not within the area carved out for them. Witness deposition of Solomon Ugiagbe was admitted as Exhibit 'A'. Late Surveyor lyawe prepared a litigation survey of the

land. He testified before Hon. Justice Acha. Previous court proceeding of evidence of surveyor Iyawe before Hon. Justice Acha was admitted in evidence as Exhibit 'B'. Survey Plan NO. ISO/ED/D46/2010 was admitted in evidence as Exhibit 'C'. Certified copy of the Observer dated 29/1/2003 and revenue receipt were admitted as Exhibits "D1 – D2". Edo State of Nigeria Gazette No.51 Vol.17 of the 6/12/2007 was admitted in evidence as Exhibit "E".

Under cross – examination by Learned Counsel for the defence Okuns Aihie Esq. the witness stated that the land in dispute is located in Ogba reserve. There is a road from Ekenwan road to NDDC, called Utagban road. The road separates the forest reserve and free land. It does not separate Uholor land. Ebuowe is not in Uholor land. He did not testify before Hon. Justice Acha that Ebuowe is in Uholor land. The Defendants community have common boundary with his community. He is the present Odionwere. Ebuowe have building in their community. The defendant community is in the forest reserve. Odibo camp is located in the forest reserve. The defendant community has a common boundary with Evbuodia community and have a common boundary with his community. The N.D.D.C. road does not separate the defendants community from Evbuodia. The Government acquired the reserve, the N.D.D.C. road does not separate the land. Ogba river separated Uholor and Iyeke Ogba Land. Ulemon community is in the reserve. 2nd and 3rd Claimants attended his installation as Odionwere.

In Exhibit 'B' the Surveyor Francis Osegese Iyawe stated he carried out a litigation survey of the land situate at Ebuowe, Idemudia and Evbuoghodo communities in Oredo Local Government Area, ward 2, Benin City Edo State. Before he carried out the survey of the land the Claimants gave him a copy of the Edo State of Nigeria Gazette No.51 volume 17, Edo State Notice, No.61 of 6/12/2007 which is their root of title. He visited the land in dispute in the company of the Claimants sometime in April, 2010. He was shown the boundaries on the disputed land as described in the Edo State of Nigeria Gazette No.51 volume 17, Edo State Notice, No. 61 of 6/12/2007. He prepared the litigation plan No.ISO/ED/D46/2010 dated 28/4/2010.

Under cross examination by learned Counsel for the defence Okuns Aihie, the witness stated that it was on the basis of the Gazette Exhibit 'E' he had the coordinates to produce 'C'. The communities the Government de-reserved land for in Exhibit 'E' are four communities. Each of the communities have their distinct boundaries. In Exhibit 'C' to the North is Effionayi village also called Enamuna camp. Full name Effionayi camp. Enamuna camp is outside the forest reserve, because before the deforestation no community was allowed to settle or plant permanent crops. He does not know if the defendants are located within the forest reserve. Evbuowe community is also located outside the reserve. He does not know if the road linking Evbuowe and Effionayi villages as shown in Exhibit 'C' is also called Utagban road. He does not know if the Utagban road separates the forest reserve and Uholor land. From Exhibit 'C' Evbuowe and Effionayi have no settlement within the reserve, they only farm there. He identified 1st Evbuoghodo settlement in Exhibit 'C', he does not know where they are now settled. The houses there are now in ruin. He does not know where Idemudia village is. Efonayi is not within the area verged green on Exhibit 'C', it has its own. The other three communities are within the area verged green of the Government reserve in Exhibit 'C'. He was shown road to Ulemon village but does not know how far it is from that point. He excised 30 hectares in Exhibit 'E' for the 3 communities, so the 10 hectares left is for Efonayi. The shrines, settlements etc in Exhibit 'C' are all there.

DW1 is Surveyor John E. Anao. He lives at No.28 Ogbelaka Street Benin City. The defendants commissioned him to carry out litigation survey on their community land, Ulemon village. They showed him some documents, Map/Plan of part of government reserved forest along Ogba river was admitted in evidence as Exhibit "F". He was shown Exhibits "E" and "C". He prepared a litigation survey plan for the defendants. Survey Plan NO AJETS/ED2010/D010 was admitted as Exhibit "G". The litigation survey plan showed the following

- (i). The entire land of Defendants verged blue.
- (ii) The area in dispute verged red, Area: 56.208 hectares.

- (iii) The Portion of Ulemon Land erroneously de-reserved for Evbuowe, Efonaye, Evbuoghodo and Idemudia village verged green: Area: 40.315 hectares.
- (iv) Existing roads like Utagban road, which forms the boundary between Uholor land in Ovia North East Local Government Area and Ulemon village land in Ogba Forest Reserve in Oredo Local Government Area.
- (v) Iyenoma, Aruotor, Osunegbo shrines, of Defendants.
- (vi) Completed and uncompleted buildings. Note that building in Evbuowe camp are located in Uholor community land while the Defendants buildings and shrines are located within the de-reserved Area as shown on the litigation survey plan.
- ((vii) The de-reserved portion as indicated in the gazette No.51 Vol. 17 of 6/12/2007 does not strictly correspond to that which the Claimants have shown in their litigation survey plan.

Under cross-examination by Learned Senior Counsel for the Claimants A. O. Eghobamien SAN the witness stated that he has seen the co-ordinates of government pillars in respect of land in Exhibit "E". He did not super impose the coordinates in Exhibit "E" in Exhibit "G". He established it.

DW2 is Raphael Imonina. He lives at Urhegbo camp Ulemon community. His grandfather was the first Urhobo man to set up a camp in Ulemon community, his father and himself were born and raised there. he knows the location and boundary of Ulemon community, and the Claimants community. It is not true that Odibo camp once belong to the Claimants.

Under cross examination by Learned Senior Counsel for the Claimants A. O. Eghobamien SAN, the witness identified exhibit 'E'. He is aware that the land was declared forestry reserve by the colonial masters, it was not acquisition by government. According to the content of Exhibit 'E' it was de acquired by government. The witness stated that he does not read Observer newspaper he

is not aware if the Claimants applied to government to de-acquire the land. He became aware when the claimants encroached on the land in 2003. Their community protested through their legal adviser. He is not aware of any action by his community. He is conversant with the case.

DW3 is Felix Eguaogie Otabor. He lives at No. 1 Otabor Street. His paternal grandfather is from Ulemon, his paternal grandmother is from Uholor community. They taught him the history of their communities. His grandmother's father was Odionwere of Uholor. That during the colonial period portion of Ulemon community land was declared as forest reserve. The Claimants had no house or farmland within the forest reserve. The area in dispute falls within the defendants' community land. He knows the boundaries of his community as shown in their litigation survey plan. Evhbuoghodo community does not exist within Ogba area. The State government did not acquire forest land as state land. The colonial government only administered the forest reserve but the owners of the land has been the defendants. State government took over management of the forest at independence.

Under cross examination by Learned Senior Counsel for the Claimants A. O. Eghobamien SAN the witness stated that he is the Secretary of the community. He is not aware of Exhibit E. He became aware of deacquisition when the case was filed. He became aware of Exhibit 'D' when the case was filed. He did not protest to the government and does not know if his community protested. He does not know the surveyor and he did not accompany him to show him the boundaries.

Okuns Aihie Esq. of Learned Counsel for the Defendants formulated 2 issues for determination as follows.

1. Whether Ogba Forest Reserve where the land in dispute is located was ever acquired by Government from the communities that owned the land.
2. Whether the Governor of Edo State is conferred with the requisite power to de-reserve Forrest Reserve and confer ownership of the area in dispute

on the Claimants as vide Gazette No.51 Vol.17 Edo State Notice No.61 of December 2007.

On Issue one Counsel submitted that the person who asserts truth or existence of a fact must prove it. *Achibong V Ita* (2004) 13 WRN 1 at 22 lines 33 – 35; *George V UBA* (1972) 8-9 SC 264. That by pleadings and evidence led the Claimants are relying on traditional evidence to prove their title to the land. *Jodi V Salami* (2009) 27 WRN 24 at 38 ratio 13; *Idundun V Okunmagba* (2002) 20 WRN 127 ratio 1.

That there is no averment in the Claimants pleadings as to the names of their forefathers that founded the land and exercised original act of possession. **Ahmadu VNgeri (2010) 43 WRN 52 at 57; Onwugbufor V Okoye (1996) 1 SCNJ 1 at 21.** Counsel submitted that Claimants failed to plead and lead evidence of the unbroken chain of how the land devolves to them through the original persons that deforested the land in dispute. **Awodi V Ajagbe (2007) 47 WRN 95 ratio 3 & 4; Yusuf V Adegoke (2008) 40 WRN 1 at 23 ratio 22; Okonkwo V Okonkwo (2003) 51 WRN 112; Ansarud-deem V Mogaji (2003) 7 WRN 118.** That since the Claimants had failed to prove their pleaded root of title which is by traditional evidence, it will be futile to go into the issue of possession or acts of ownership. **Fashoro & Anor V Beyioku & Ors (1988) 2 NWLR (pt.76) 263 at 371; Ukaegbu V Nwokolo (2009) 12 WRN 1 at 33 lines 5. 11.; T.R.T.D.A. V Nkume (2002) 8 WRN 73 at 76 ratio 2; Obiora V Duru (1994) 8 NWLR (pt.365) 631; Alhaji Are & Ipaye & Ors (1990) 2 NWLR (pt.132) 296 at 301.** That in paragraph 24, 25 and 26 of the Defendants' statement of defense raises new issues. That where a statement of defense raise a new issue of facts not arising from the statement of claim the claimants have a duty to deal with the new issue of facts otherwise the facts will be deemed admitted by the Claimants. **Phillips V Eba Oden Commercial & Ind. Co. Ltd. (2013) 7 WRN 1 ratio 4.** That the evidence of PW1 under cross examination is that 2nd and 3rd Claimants as members of his community took part in his installation as Odionwere of Evbuowe. This piece of evidence corroborates the evidence of the DW2 and DW3 that the 2nd and 3rd Claimants are from the 1st Claimant community and does not exist as a distinct community. That evidence against interest is admissible against the Claimants. **Jinadu V**

Esurombi-Aro (2009) 35 WRN 1 ratio 4; Eigbe V NUT (2008) 24 WRN 11 ratio 2; Akanino V Nsirim (2008) 20 WRN 99 ratio 14.

Counsel submitted that a non-existing community cannot own land. The Defendants in proof of their case averred that they have defined boundaries. That PW1 in paragraph 29 of his written deposition Exhibit A also corroborated the evidence of the Defendants that they have defined boundaries. That the boundaries verged blue in Exhibit G are the defined boundaries being referred to as there is no other defined boundaries of the Defendant community land before this court. That where a piece of evidence is unchallenged and in fact corroborated like in this case the court is bound to act on that unchallenged evidence. **Cappa Ltd Akintilo (2003) 27 WRN 1 ratio 5.** Counsel urged court to accept Exhibit G as the correct survey showing the true features of the area in dispute and to discountenance exhibit C for being inaccurate for the following reasons:-

1. In Exhibit B under cross examination Mr. Iyawe admitted that the four communities in Exhibit E had distinct boundaries yet in Exhibit C there is no boundary demarcating the communities.
2. In Exhibit B under cross-examination Mr. Iyawe admitted that he on his own unilaterally and arbitrarily excised 10 hectares of land from Exhibit E to prepare Exhibit C.
3. The shrines and other features like farm land do not show on which of the three communities they are located. A careful look at the survey plan you will find a shrine which is claimed to belong to Ebuowe in Evbuoghodo community vice versa.
4. In Exhibit C Ago-Odibo was referred to as formerly for the Claimants but now it is in Ulemon land without any explanation as to how it became Ulemon land. Not for question for address, as evidence was not led under cross – examination by the defence on this issue the court cannot act on guesswork.

That the main purpose of a counter plan is to counter or counteract an existing plan to expose it as incorrect or inaccurate. **Achibong V Ita (2004) 13 WRN 1 at 3 lines 6 – 9; Daisi V Oloto (2012) 48 WRN 134 at 138 ratio 5; Omoniyi V Akiyode (2004) 19 WRN 41 ratio 8.** Counsel submitted that Exhibit B is inaccurate in all particulars as to the area that was arbitrarily drawn and as to the features on it. That the accuracy and authenticity of Exhibit G has not in any way been called into question and should be accepted as a true reflection of the features on the land in dispute. That the photocopy of a certified public document is admissible. **Keri V Ezunaka Bros. Ltd. (2003) 23 WRN 51 ratio 4.** That the photocopy of the certified map of Forest Reserve wrongly mark rejected should be admitted as exhibit. That the purpose is only to corroborate the testimony of DW3 that it is only Evbuodia and Ulemon Community that were located in Evbuodia Tungya farm as shown in the said map. That DW3 in paragraph 7 of his adopted statement gave evidence that it is only Evbuodia and the Defendant community that were located within Evbuodia Tungya farm and he was not cross examined or discredited on this fact. That unchallenged evidence should be accepted as true. The evidence of DW1, DW2 and DW3 shows the area in dispute falls within the Defendants land in the demarcation carried out in exhibit F by the government of Edo State. That as averred in paragraph 11, 12, and 16 of Defendants' statement of defence, the act of possession over a long period of time is proof of ownership of the land. **Balogun V Akanji 25 WRN 1 ratio 3 and 6; Jinadu V Esuronbi-Aro (2009) 35 WRN 1 at 28-29.** That since PW1 has admitted in paragraphs 20 and 26 of his adopted statement Exhibit A that the Defendants are in possession of the connected land or adjacent land to the land in dispute this court can draw inference that the Defendants are the owners of the land in dispute.. **Daisi V Oloto (2012) 48 WRN 134 at 154 lines 16 – 29; Ahmadu V Ngeri (2010) 43 WRN 52 ratio 6.** That where a Claimant fails in proving his root of title he cannot be conferred with the ownership of the land in dispute. **DN Orunengimo V Egebe (2007) 52 WRN 1 ratio 4.** That the mode, nature and dimension of the land acquired must be pleaded and evidence must be lead on the acquisition. That the Claimant failed to plead and lead evidence on the acquisition of the land from them (whether it was by grant, sale, conquest, gift, public acquisition etc) whether it was jointly or separately acquired from the four communities. **Achibong V Ita (2004) 13 WRN 1 at 22 lines 33 – 35; George V UBA (1972) 8**

– 9 SC 264. That since the Claimants failed to plead and lead evidence on the acquisition of the land they cannot talk about de-acquisition. That acquisition follows de-acquisition. **Uniben V Effionayi (2012) WRN 76 ratio 2.** That the Claimants pleaded acquisition but failed to lead evidence also failed to plead or lead evidence that the land in dispute was de-acquired. That the mere fact that exhibit E was tendered and on it is written “LAND DE-ACQUISITION BY THE GOVERNMENT OF EDO STATE OF NIGERA. Pg. 107 – 108 does not mean that the land in dispute was de-acquired. That court cannot on the face of the document without anything more speculate that the land in dispute was de-acquired. **Achibong V Ita (2004) 13 WRN 1 at 27 lines 48 – 49; Olalomi Industries Ltd. NII.D.B. (2002) (pt.1131) 1984 (2002) NWLR (pt.1795) 58**

That Section 4(1) and (2) of the Forestry Law Cap 59 laws of Bendel State now applicable to Edo State, stipulate and State the procedure to constitute Forest Reserve. The said section state that Forest Reserve are created when an area of forest is declared a Forest reserve. That the Defendants pleaded and led evidence that their entire land where the area in dispute is located was declared Forest Reserve.

Counsel further submitted that the Defendants pleaded and led evidence that this land which was declared Forest Reserve is part of Ogba Forest reserve created by Gazette 50 of 19:10:16 which was amended by order 53 and 54 of 1931 and converted by order 26 of 1935 see List of Instrument Constituting Forest Reserve in Forestry Law Cap 59 Laws of Bendel State applicable to Edo State. That paragraphs 9, 10, 11, 12, 27, 28, and 29 of the Defendants statement of defense the Defendants averred that they have been the owners of the land from time immemorial till date. They further averred that they live within the Forest Reserve and they also pleaded that they are in possession of the land in dispute and were never divested of the land. They led evidence to prove these assertions. Counsel urged the court to hold that the Defendants are the owners of the area shown in Exhibit G which was constituted Forest Reserve. See Section 41(1) and (3) of the Forest law cap 59 laws of Bendel State now applicable to Edo State which state the ownership of lands which have been constituted Forest Reserves or protected forest area vested in the community where the Forest Reserve is located. The Defendants have proven that their

community is located within Evbuodia Taungya Farm in Ogba Forest Reserve. They proved that Edo State Government made Exhibit F. They proved that their entire land was declared Forest Reserve. They also proved that they live and are in possession of the land in dispute till date.

Counsel submitted that the government of Edo State cannot give out the Defendant land to the claimants in the guise of de-reservation or de-acquisition as it will amount to robbing Peter to pay Paul. **Suu V Jobak (Nig) Ltd. (2012) 49 WRN 52 at 105 lines 5 – 15.** Counsel urged the court to resolve issue one in favour of the Defendants that the land in dispute was never acquired but declared as Forest Reserve.

On Issue II, Counsel submitted that by virtue of Section 42 of the Forestry Law Cap 59 laws of Bendel State, all Forest Reserve that were created before coming into effect of this law are deemed to be constituted and regulated by the Forestry law cap 59 of Bendel State now applicable to Edo State. That the Claimants pleaded in paragraph 7 that Edo State Governor graciously approved Forest land for the immediate use of the Claimants. The Claimants failed to tender the said letter pleaded. That the Claimants withheld the said letter because it will be unfavourable to them. That it is section 21 of the Forestry law cap 59 laws of Bendel State that regulates how forest reserve should be de-reserved. That any Forest Reserve that is de-reserved must be published in the gazette. That Exhibit D1 – D2 is not gazette of de-reserving Forest Reserve. That failure of the Claimants to tender the gazette that de-reserved the land in dispute is fatal to their case. That Exhibit E which is a government gazette was not pleaded and tendered as the gazette that was used to de-reserve land for the Claimants. Counsel urged the court to discountenance the said Exhibit as a gazette where the land de-reserved was published.

Counsel submitted in the alternative, that if court is mindful to hold that it is the gazette of de-reservation of Forest land, that there is no evidence before the court that the de-reservation was carried out by Edo State Executive Council. That Section 315 (2) does not confer the Governor with such power but only confer the Governor with the power to legislate on existing law and bring it in conformity with the 1999 Constitution. **A.G. Abia V A. G. Federation (No.2)**

(2003) 19 WRN 1 ratio 2. That the exercise of power by the Governor to de-reserve land is ultra vires his power so it is null and void. **Dabo V Abdullahi (2005) 29 WRN 1 RATIO 15.** That since section 21 of the Forestry law has stipulated the procedure for the de-reservation of land any other procedure not in strict compliance with section 21 of the Forestry law is null and void. **Auchi V Okunghae (2005) WRN 177 ratio 2; Goldmark Nig. Ltd. V Ibafo Co. Ltd. (2012) 211 LRCN 31 at 92; Nnonye V Anyichie (2005) 124 LRCN 257; Jodi V Salami (2009) 27 WRN 24 at 40 ratio 5; Adeniran V Alao (2002) 4 WRN 1 at 7 ratio 2.; Emuze V V. C. Uniben (2003) 110 LRCN 1796 ratio 5; Anya V Iyayi (1993) 7 NWLR (pt.305) 290 at 315.**

Counsel submitted that by virtue of section 41(1) and 3 of the Forestry law cap 59 Vol. III laws of Bendel State which is applicable to Edo State, the customary owners of the land where the Forest Reserve is located are the owners of the land. That there is no evidence before this court that the customary owners of the land have been divested of their interest in the land. **Suu V Jobak (Nig) Ltd. (2012) 49 WRN 52 at 62 ratio 9; Daisi V Oloto (2012) 48 WRN 134 at 153 para. 12 – 30; Otukpo V John & Anor (2012) LRCN 141 at 150 ratio 7.** That it is only when the grantor has that which he purports to grant that there can be a valid grant. **Memo dat quod non habet. Daisi V Oloto (2012) 48 WRN 134 at 139 ratio 7.** Counsel submitted that Exhibit E is not a document de-reserving a Forest Reserve or de-acquiring a piece of land. It does not confer any legal right whatsoever on the Claimant. That the Claimants cannot apply for a certificate of occupancy on the basis of Exhibit E. **Suu V Jobak (Nig) Ltd. (2012) 49 WRN 52 ratio 9.** Counsel urged court to hold that Exhibit E is not an instrument of grant having failed to satisfy the above criteria. That for the Claimants to succeed they must succeed on the basis of credible evidence to prove their case and not on the weakness of Defendants case. **Bankole V Oladele(2010) 34 WRN 1 at 15; Daisi V Oloto (2012) 48 WRN 134 at 138 ratio 3.** There is no evidence of de acquisition. Exhibit E did not talk about de-acquisition. Exhibit E did not contain page 107, the Claimant did not tender it because it was against them. On mode of acquisition; **Mallam Olabunja V Chief Adesoye & Or 2004 All FWLR pt. 232 pg. 1416 at 1462.** No evidence before court that they originally owned the land. That the Claimants failed to prove their case on preponderance of evidence as required by law.

Learned Senior Counsel A. O. Eghobamien SAN for the Claimants formulated 2 issues for determination as follows:-

1. Whether the Claimants are not entitled to the declaration of title in respect to all that land as shown in litigation survey plan NO.ISO/ED/D46/2010 dated 28/4/2010 having regard to the Edo State of Nigeria Gazette no.51 Vol. 17 Edo State Notice No.61 of December 2007 which vest the property in dispute on the Claimants by the government of Edo State.
2. Whether the Claimants have proved the case of perpetual injunction and damages for trespass against the Defendants.

On Issues 1 and 2, Learned Senior Counsel submitted that the Claimants have proved their case beyond balance of probability as to entitle them to judgment. The reason for saying so is because of Exhibit E. Counsel commend exhibit E to the court which is the gazette. It is settled law that any fact stated in official gazette constitute a notice to the whole world. **Nwosu V Imo State Environmental Sanitation Authority & 4 Ors (1990) 2 NWLR (pt.135) pg. 688 at 738 paras E – H.** That there is no evidence before the court that the land de-acquired by the government of Edo State was revoked as per gazette exhibit E. Since it was not revoked, the content as per exhibit E is valid. **Imade V Military Adminstrator Edo State & 5 Ors (2001) 6 NWLR (pt.709) pg. 478 at 491 paras F-G.**

How be it, DW1 the defendants' surveyor who tendered Exhibit G admitted that he saw exhibit E before he carried out and produced exhibit G. Since he is their witness, he becomes a part to the case. It is settled law that every person served with a notice of or attending, any proceedings, whether named as a party to that proceedings or not is a party. **Halsbury's Laws of England Vol.10 pg. 72. Section 2 of the High Court Law Cap 65; Bello V Adedoyi (1975) 4 WACA pg. 16 at 25.** The defendants did not protest to the government for the revocation of exhibit E. The defendants are guilty of standing by. Having failed to protest to the government they are caught by the doctrine of Estoppel. **Obitunde V Onysom Community Bank Ltd. (2014) 9 NWLR (pt.1412) 352 at**

382 paras D-E; Section 161 of the Evidence Act 2011. Learned Senior Counsel submitted that the defendants in this case did not traverse properly paragraphs 6, 7, and 12 of the statement of Claim. That in paragraph 5 of the Statement of defence the defendants averred that they are not in position to admit (sic) or deny paragraphs 6,7,and 12 of the statement of Claim. It is trite law that in order to raise an issue of facts there must be a proper traverse and the traverse must be made either expressly or by necessary implication. **Lewis & Peat (N.R.I.) Ltd. V Akhimien (1976) 7 SC at 157 particularly at 163 lines 1 – 13;** It is also trite that what is not denied is deemed admitted. The Defendants are deemed to admit paragraph 6, 7 and 12 of the statement of claim. What is admitted need no further proof. Section 123 of the Evidence Act. Learned Senior Counsel urged court to give judgment to the claimants as per their claim.

On reply on points of law, Learned Senior Counsel for the Claimants A. O. Eghobamien (SAN) submitted that Exhibit E speaks for itself, the back page states the beacon numbers, whilst the first page states the description. It is trite law that when a Government publish a gazette any person not happy must file a rejoinder within 6 months. Exhibit 'E' is deemed admitted by the defendants. The defendants relied on a document marked rejected. See **Bello V Governor of Kogi State 1997 9 NWLR pt. 521; Ita V Ekpenyong 2001 1 NWLR pt. 695; Obintunde V Oyenson 2014 79 NWLR 1412 at 352 at 362 para. D – E.; Obintunde V Oyenson 2014 79 NWLR 1412 at 352 at 382 para. D – E; S.161 of Evidence Act.**

I have perused the pleadings filed and given consideration to the evidence led and submissions of Counsel. It is the law and now trite that where a Plaintiff as in the instant case seeks a declaration of title to land he has a duty to establish his entitlements to that relief on the strength of his case and not on the weakness of the defence. See **Ugoji V Onukagu (2005) 16 NWLR pt. 950 pg. 97 at 113; Ngene V Igbo (2000) 4 NWLR pt.651 pg. 31; Mulima V Usman (2014) 16 NWLR pt. 1432 pg. 160 at 172** The issues for determination are as formulated by the Claimant and Defendant filed in court on the 17/4/2013 and 21/4/2013 as follows:-

1. Whether the Claimants are not entitled to declaration of title in respect of all that land as shown in the litigation survey plan No.ISO/ED/D46/2010 dated 28th April, 2010 having regards to the Edo State of Nigeria Gazette NO. 51 Vol.17 Edo State Notice No. 61 of December, 2007 which vests the property in dispute on the Claimants by the Government of Edo State.
2. Whether Ogbo Forest Reserve where the land in dispute is located was ever acquired by government from the communities that owned the land.
3. Whether the Governor of Edo State is conferred with the requisite power to de-reserve Forest Reserve and confer ownership of the area in dispute on the Claimants as done vide Gazette NO.51 Vol. 17 Edo State Notice NO. 61 of December 2007.

I had earlier set out the evidence of the Claimant, Surveyor Iyawe in Exhibit B and the defence. The crux of Claimants' case is that the land in dispute formed part of the area acquired for forest reserve in the 19th century. One Owe was their fonder, he migrated from Iguihean village. Their forefathers deforested the land for farming. The forest reserve remained government property after independence in 1960. The Edo State Government published in the Nigerian Observer Exhibits D1 and D2 "its intention to de-reserve some hectares for the Claimants for development. On the 2nd June 2006 the Edo State Governor approved for the Claimants including Effionayi community approximately 40,315 hectares of forest reserve. Effionayi community has 10 hectares and not affected by this suit. Thus remaining approximately 30.315 hectares the subject matter in this suit. The Ex Governor, His Excellency Lucky Igbinedion published in Edo State Gazette NO.51 Vol.17 Edo State notice 61 dated 6/12/2007 Exhibit 'E'. The Claimants have a statutory right of occupancy by virtue of the Gazette. Sometime in 2009, the Claimants discovered illegal structures being constructed on the land by the Defendants. After the reservation the Ministry of Agriculture allocated an area of the forest reserve to farmers from Claimants' community to farmers from different communities including the Defendants community to farm, farming did not confer ownership of the land on the community farming there a communal land called Evboudia Taungya farm. After the colonial masters

reserved the forest the Claimants moved out to settle outside the forest reserve. The Defendants shrines are not within the Forest reserve.

The Surveyor's previous testimony was tendered and marked as Exhibit 'B'. Under cross-examination he stated that it was on the basis of Exhibit 'E' he got the co-ordinates to produce Exhibit 'C'. Effionayi village is also called Enamuna camp is at the North in Exhibit 'C' which is outside the reserve because before deforestation no community was allowed to settle or plant permanent crops. Ebuowe and Effionayi have no settlement within the reserve. He identified 1st Evbuoghodo settlement in Exhibit 'C'. He excised 30 hectares in Exhibit 'C' for the 3 communities so 10 hectares left is for Effionayi. The Defendants have no land within the reserve.

I shall proceed to determine if there was proper Notice to de-reserve the land in dispute. The Edo State Government caused to be published in the Nigeria Observer of the 29th of January 2003 Exhibits D1 – D2 " its intention to de-reserve some hectares of land for the Claimants and Effionayi community. The Government or Edo State by Exhibit 'E' Edo State Gazette No.51 Vol. 17 Edo State Notice No.61 dated the 6/12/2007 de-reserved 40.315 hectares for Ebuowe Effionayi, Evbuoghodo and Idemudia Communities for their immediate development. Any fact stated in an official Gazette constitutes a notice to the whole world. **Nwosu V Imo State Environmental Sanitation Authority & 4 Ors 1990 Vol. 1 ANLR pg. 381**. An official gazette is a public document within the operations of the provisions of section 97 (1) (c), 111, 112 and 114 of the Evidence Act and it is proved in proceedings in court by mere production of the gazette followed by its formal tendering, not necessarily through a witness on oath, and marking it as an exhibit in the proceedings. It is judicially noticed on its mere production and at common law it is evidence of acts of public officials. **Our Line Ltd. V SCC Nig. Ltd. (2009) 17 NWLR pt. 1170 pg. 382 at 393.** As documentary evidence, the contents of a gazette is prima facie proof of any fact of a public nature which the gazette is intended to notify **Our Line Ltd. V SCC supra at pg.392.** The Gazette was published on the 6/12/2007. The purpose of publication is to acquaint the public with the facts and to provide an opportunity for criticism. **Popoola V Adeyemo 1992 8 NWLR pt. 257 pg. 1 at pg. 6.**

DW2 and DW3, stated they were not aware of Exhibit 'E'. Ignorance of the content of the gazette is no defence. **Imade V Military Administrator Edo State & 5 Ors (2001) 6 NWLR (pt.709) pg. 478 at 491.** The DW1, Defendants' Surveyor admitted that he was given Exhibit 'E' which he relied on to produce Exhibit G. I am in agreement with the submissions of learned Senior Counsel for the Claimants that DW1 is a party to the proceedings. The Blacks Law Dictionary Ninth Edition pg. 1232 defines a party as "A person who takes part in a legal transaction or proceeding is said to be a party to it."

Furthermore, DW1 stated he was given a copy of Exhibit E by the Claimants. The Defendants did not tender before court any evidence of protest to the Edo State Government. In a land case, the court can compare survey plans of parties in order to see the relationship between them. **Nwokidu V Okanu (2010) 3 NWLR pt.1181 pg. 62 at pg. 369.** In Exhibit 'B' the Surveyor stated he reflected the co-ordinates in Exhibit 'E' in Exhibit 'C'. I have examined Exhibit 'C' it reflected the co-ordinates in the North and East, as shown in Exhibit 'E'. Exhibit 'C' showed the farmland, shrines of the Claimants, old settlement of Evbuoghodo, old settlement of Idemudia village present settlement of Evbuowe, roads constructed by the Claimants, roads constructed by the Defendants and building of Defendants the cause of action.

DW1 Surveyor for the Defendants stated he was given a farm map Exhibit 'F'. He used Exhibit 'E' and 'F' to prepare the composite survey plan Exhibit 'G'. I have perused Exhibit 'G' the DW1 did not reflect the co-ordinates in Exhibit E in Exhibit 'G' this fact he admitted under cross – examination. He did not reflect the co-ordinates in Exhibit 'F' in Exhibit 'G'. Exhibit 'G' did not constitute a proper survey . Furthermore, the dimension of the Defendants farm land in the Government Survey Exhibit 'F' is not reflected in exhibit 'G' as it did not reflect the co-ordinates (Beacon numbers) in Exhibit 'E', therefore, I am of the firm and humble view that his findings in his statement on oath are not to be relied upon, as the survey plan is not a proper survey. Survey beacons constitute an act of possession which could be relied on to prove title to land. **Thompson V Arowolo (2003) FWLR (pt.164) 315**

Learned Senior Counsel for the Claimants submitted that the Defendant did not traverse properly in paragraph 5 of their statement of defence.

Paragraph 5

“The Defendants aver that they are not in a position to admit or deny paragraphs 6, 7 and 12 of the statement of Claim.”

Any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleadings or a joinder of issue operates as a denial. Consequently, the failure of the defence to rebut these paragraphs is tantamount to an admission. **U.B.N. PLC V Chimaeze (2014) 9 NWLR pt. 1411 pg. 166 at pg. 175; Tukur V I.P.E.S. Ltd. 2014 17 NWLR pt. 1437 pg. 575 at pg. 580; Ajibulu V Ajayi (2014) 2 NWLR (pt.1392) pg. 483 at 489.**

On issue one for determination by the defendants whether the Forest reserve was ever acquired by the Government from the communities that owned the land.

From the pleadings of the Claimants and Defendants it is admitted by the parties that the land in dispute was declared a forest reserve by the colonial government.

Paragraph 7 Statement of Claim

“The land in dispute containing an area of about 30.315 hectares form part of the area called Ogba forest reserve of Edo State of Nigeria, which the British Government through their representative in Benin acquired for forest reserve. The said Forest reserve remained Government property even after independence in 1960.

Paragraph 6 statement of defence

“The Defendants aver that Ulemon land and Evbuodia land were declared as Forest reserved during the colonial period to form part of Ogba forest reserve. “

What is admitted needs no proof. **Our Line Ltd. V SCC Nig. Ltd. Supra at p.398; Ayoke V Bello (1992) 10 NWLR (pt.218) pg. 380; O. A. A. Co-operative Society V N.A.C.P. Ltd. (1999) 2 NWLR (pt.590) pg. 234.** The evidence before court is that the land in dispute was reserved, it was not acquired by government from the customary tenants. Address of Counsel that it was acquired cannot take the place of evidence. **Ugorji V Onwuka 1994 4 NWLR pt. 397 226 at 230; Okeji V Olokobo (2000) 4 NWLR (pt.654) 513; Nigeria Airways V Okutubo (2002) 15 NWLR (pt.7900) 370.**

Learned Counsel for the Defence submitted on the traditional history pleaded by the Claimant, that the Claimants did not plead the names of their forefathers. In paragraph 34 of the Statement on oath of Claimant they pleaded that their founder is one Owe who migrated from Iguihean village and settled in Ogba forest reserve. Owe deforested the land but on acquisition of the Ogba forest as a reserve by the colonial masters, their community moved to their present settlement. The Claimants pleaded their root of title to one Owe, they also stated they have been in occupation on the land in dispute since time immemorial. Modes of acquisition of title to land may be by:

- (a) First settlement on the land and deforestation of virgin land. See **Idundu & Ors V Okumagba & Or 1976 Vol. 10 NSCE 440**

A party relying on evidence of traditional history must plead his root of title. He must show in his pleadings and evidence who those ancestors of his are and how they came to own and possess the land and eventually passed to him. **Oniaeri Akabuze (1990) 2 NWLR (pt.221) 5; Akinloye V Yiyola (1968) NMLR 92.**

On acts of long possession of the land in dispute. The Claimants tendered Exhibit C the survey plan, the survey plan showed boundary to the land in dispute the ruins of an old settlement belonging to Evbuoghodo community, the

shrines of the Claimants, farmland of Claimants some buildings of the Claimants, cassava mills.

Learned Counsel submitted that the Surveyor in exhibit 'B' did not show the boundaries, with due respect to Counsel, the witness identified the boundaries, he showed the settlement of Effionayi, Idemudia, Evbuowe and old settlement of Evbuoghodo which is in ruins in the reserve. The Surveyor showed the shrines in the Claimants land in dispute in Exhibit 'C;'

Learned Counsel for the defence alleged to a shrine claimed to be in Claimants community and Defendants community, address of Counsel cannot take the place of evidence, the answers to Counsels enquiry are matters to be proved by adducing evidence. Learned Counsel for the defence posed a question to court why Ago-Odibo was referred to being for the Claimants but is now in Ulemon land? Courts do not act on guesswork but on concrete evidence placed before it. **Lekwot V Judicial Tribunal 1997 8 NWLR pt 515 pg. 22 at 35.** The Defendants in their statement of defence relied on traditional history, that they have been in possession from time immemorial. The defendants did not state whom are their ancestors and how they came to be on the land but averred that they are the oldest community in the Iyeke-Ogba area.

As earlier stated, the defendants survey plan exhibit 'G' did not reflect the co-ordinates (beacon numbers) in Exhibit 'E', neither did it reflect the beacon numbers in Exhibit F. Exhibit 'G' is not a proper survey plan. Courts do not act on guesswork but on concrete facts placed before it.

On issue two for determination by the defendants whether the Governor of Edo State can de-reserve forest reserve and confer ownership of the area in dispute on the Claimants vide Gazette No.51 Vol.17 Edo State Notice No.61 of December 2007.

To determine this issue reference will be made to the Forestry Law Cap 59 Vol. III Laws of Bendel State 1976 as applicable to Edo State. Section 4 of the Forestry Law empowers the Governor to create a Forest reserve. Section 12 (1) of the Forestry Law provides:-

1. The military Governor may at the expiration of three months from the date of publication of a notice in a gazette:-
 - (a) Under subsection (1) (a) (b) (c) (d) inclusive and subsection 3 of subsection 5 of this law in relation to lands at the disposal of the government; or
 - (b) Under section 10 of this law in relation to lands in respect of which an enquiry has been held; make an order constituting such lands a forest reserve.

Section 21

“The Executive Council on the advise of the appropriate authority may by order published in the State Gazette direct that from a date named therein any lands or any part thereof constituted a forest reserve under section 12 of this law shall cease to be a forest reserve or a part of such reserve and thereupon from such date such lands shall cease to be a forest reserve or a part of such reserve; provided that the rights, if any, which may have been extinguished therein shall not revive in consequence of such cessation.”

The proviso to section 21 is clear and unambiguous, all previous rights if any which existed prior to reservation were extinguished and shall not be revived on de-reservation.

Learned Counsel for the Defence submitted that if the court holds the Gazette to be a document of de-reservation there is no evidence that the deforestation was carried out by Edo State Executive Council.

It is trite law that he who asserts must prove. The shifting burden of proof in civil cases is not new. It is as old as the law of evidence itself and it is not fixed on the Plaintiff as it is on the prosecution in a criminal case. It is the transferring of proof from one party to the other, or from one side of the case to the other,

where whom it rested originally has made out a prima facie case or defence by evidence of such a character that it then becomes incumbent upon the other to rebut it by contradictory or defensive evidence. **Okoye V Nwankwo (2014) 15 NWLR (pt.1429 pg. 93 at pg. 108.** It is the duty of the defence to prove that the de-reservation was not done by the Executive Council on advice of the appropriate authority. Official Gazettes are a class of official documents which section 113 (a) (1) of the Evidence Act, makes provision for as part of the provisions made for documentary evidence under the Act. A gazette therefore serves as an official communication of the government of Nigeria or of any State thereof or of any local government. As documentary evidence, the contents of a gazette is prima facie proof of any fact of a public nature which the gazette is intended to notify. The term prima facie means at first sight; on the first appearance; on the face of it; so far as it can be judged from the first disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary. **Our Line Ltd. V SCC Nig. Ltd. supra pg. 292.** See Section 148 of the Evidence Act 2011 on presumption as to genuineness of official gazettes. When any Judicial or Official Act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with. Section 168 (1) of the Evidence Act. Consequently, there is a presumption of regularity that all procedures to the issuance of Gazette Exhibit 'E' were complied with.

I shall consider the proviso of Section 315 (2) of the 1999 Constitution.

The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution. Subsection 315 (4) b "existing law" means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date;

(c) "modification" includes addition, alteration, omission or repeal.

Consequently, reading section 21 of the Forestry Law in conjunction with section 315 (2) and 315 (4) (b) (c) of the Constitution of the Federal Republic of Nigeria

1999, that the Governor of Edo State Chief Lucky Nosakhare Igbiniedion was rightly vested with powers to de-reserve the forest vide Edo State Gazette No. 51 Vol.17 Edo State Notice 61 dated 6/12/2007.

Order 25 rule (2) of the High Court (Civil Procedure) rules Edo State, 2012 provides:

“Where a matter is to proceed to trial, the parties shall file respectively, issues for determination at the trial. The issues may state questions of law or admitted facts or questions of disputed facts or questions partly of law, of the one part and partly of facts of the other.”

The defence adopted the issues filed before court in their written address but argued other issues not formulated before court. Reference is made to issue one as formulated by the defence. Parties are bound by the issues they formulate in their brief of argument. So too the courts. The court is limited to the issues raised by the parties. It is not the function of a court to instigate parties to litigate on issues that do not bother them. The courts do not have the jurisdiction to go outside the issues formulated by the parties, gallivanting for issues that will be favourable to one of the parties. **Ojo V Kamaki (2005) 18 NWLR pt. 958 pg. 523 at pg. 537; Owners, M/V Gongola Hope V S. C. Nig. Ltd. (2007) 15 NWLR pt. 1056 pg. 189 at 197.**

I shall proceed to deal with some ancillary issues raised by the learned Counsel for the defence. Learned Counsel for the defence relied on a document marked rejected in his address. A party whose document is rejected as inadmissible has only remedy of appealing against the rejection. **Bello V Gov. Kogi State (1997) 7 NWLR (PT. 521) 496 AT 521.** “A document once tendered and rejected stands rejected. It is therefore not for any of the parties to start perfecting any imperfection thereon thereby facilitating its easy acceptance as Exhibit in the same proceedings. In the instant case, the learned trial Judge having rejected Exhibit 10, same cannot be subsequently made admissible in evidence.” **Bello V Gov. Kogi State Supra p.521.** If there is no appeal against the ruling on a trial court rejecting a document as being inadmissible or if there is such an appeal which is unsuccessful, then the document or the contents

thereof cannot be properly used or relied upon in the determination of any relevant issue in the case. **Union Bank of Nig. Ltd. V Prof Ozigi (1994) 3 NWLR (pt.333) 385**

Learned defence Counsel submitted that the PW1 admitted in paragraphs 20 and 26 of his Statement on oath that the defendants are in possession. I shall reproduce paragraphs 20 and 26 of statement of oath of PW1.

Paragraph 20

“The defendants occupy some areas of Ogba forest reserve but the area of Ogba forest reserve they occupy does not include the area of the land in dispute which the Edo State Government granted to the Claimants”

Paragraph 26

“An area of the Ogba forest was carved out for the defendants to build houses and carry out economic activities but the land in dispute is not within the area carved out for the Defendants for the said purposes. In fact, the Defendants area of land is not by any stretch of imagination near the Claimants’ community land or the land in dispute.”

Address of Counsel cannot take the place of evidence.

Learned Counsel for the defence submitted that the Claimants pleaded in paragraph 7 a document of approval by government which they failed to tender and withheld because it will be unfavourable to them. The object of frontloading documents is to notify the adverse party of documents to be relied upon. A party may elect not to tender a document. The adverse party is at liberty to address on such document not tendered if required as it is a document in the courts file and courts are enjoined to look at documents in the courts file.

Learned Counsel for the defence submitted that Exhibit E did not contain page 107 the Claimant did not tender it because it was against them. Exhibit ‘E’ is an official Gazette, it speaks for itself. A careful perusal of the Heading of Exhibit

'E' is written page 107 – 108, at the foot is page (106) (in brackets) at the reverse; left top corner is page 108. The beacon numbers were stated thereon. Learned Counsel for the defence submitted that paragraph 24, 25, and 26 of the defendants statement of defence raises new issues of facts not arising from the statement of claim, the Claimants have a duty to deal with the new issue of facts otherwise the facts will be deemed admitted by the Claimants. Counsel relied on the case of **Phillips V Ebo Oden Commercial Ind. Co. Ltd. (2013) 7 WRN 1 ratio 4.**

I shall reproduce the above mentioned paragraphs.

24. *“The defendants avers that the people of Evbuowe community had never been in possession of land in dispute up to this very moment they don't have a single home or farmland in the area in dispute.*
- 25 *That Idemudia and Evbuoghodo communities were assembled by some individuals with the sole purpose of applying to Edo State Government to de-reserved Ogba Forest reserve for their selfish interest.*
- 26 *The Defendants aver that individuals that claim to be members of Evbuoghodo community are either confused or mischievous as they are also claiming that their ancestral and historical home is in Evbuobioba community.*

This authority is on when a reply is necessary.

“A reply is not necessary if its purpose is to deny the allegations in the statement of defence.

But where the statement of defence raises new issues of fact not arising from the statement of claim, the Plaintiff has a duty to deal with the new issues of fact in his reply otherwise, the facts will be deemed admitted by the Plaintiff.”

The defence contention is that the claimants did not file a reply to paragraphs 24, 25, 26 as the above authority states a reply is not necessary if its purpose is to deny the allegations in a statement of defence. I have perused the above mentioned paragraphs they do not constitute new issues of fact arising from the statement of Claim. The defendants did not file a counter-claim. Learned Counsel for the defence submitted that PW1 stated under cross-examination that 2nd and 3rd Claimants attended his installation as Odionwere and they are from his community. That this evidence corroborates the evidence of the DW2 and DW3 that 2nd and 3rd Claimants are from the 1st Claimant's community. This amounts to an admission against interest. What the PW1 said under cross-examination is that the 2nd and 3rd Claimants attended his installation as Odionwere. This does not amount to an admission that they are from the same community.

A Statutory right of occupancy automatically extinguishes all existing rights in respect of the parcel of land over which it is granted. **Gonkon V Ugochukwu Chem Ltd. 1993 6 NWLR pt 297 62; Titiloye V Olupo (1991) 7 NWLR pt. 205 521; Onwuka V Ediala (1989) 1 NWLR pt. 96 182.** One of the recognized ways of providing title to land is by production of a valid instrument of grant. **Mulima V Usman (2014) 16 NWLR (pt. 1432) pg. 160 at pg. 173.**

Consequently, I hereby enter judgment for the Claimants as per paragraph 6 (a) – (c) of their statement of claim as follows:-

- (a) A declaration that the Claimants by virtue of Edo State of Nigeria Gazette No. 51 Vol.17 dated 6th December 2007 are the ones entitled to the statutory right of occupancy of all that parcel of land at Ogba Forest Reserve containing an area of about 30.315 hectares situate and lying at Oredo Local Government Area of Edo State within the Benin Judicial Division of this Honourable Court which is particularly described in the said Gazette as de-reserved land for Evbuowe, Evbuoghodo and Idemudia communities by the State Government and delineated in the said survey plan as pleaded in paragraph 12 above.

- (b) An Order of perpetual injunction restraining the defendants, their servants, agents, privies and/or any person claiming through them or whatsoever from entering or remaining upon the said piece or parcel of land in purported exercise of any right in relation to the possession, use and occupation of the said land or any part thereof in derogation of the Claimants' right or interest as vested by the State Government vide Edo State of Nigeria Gazette No. 51 of 6th December, 2007 Vol. 17 as delineated in litigation survey plan as pleaded in paragraph 12 above.
- (c) The sum of N10,000.00 (Ten Thousand Naira) only being general damages for the Defendants' various acts of trespass on the land in dispute.

Costs of N50, 000.00 in favour of the Claimants against the Defendants.

HON. JUSTICE G. O. IMADEGBELO
J U D G E
20/7/2016

COUNSEL:

Chief, Sir A. O. Eghobamien SAN Claimants

Okuns Aihie Esq. Defendants