

**IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA  
IN THE AFUZE JUDICIAL DIVISION HOLDEN AT AFUZE  
BEFORE HIS LORDSHIP, HON. JUSTICE N.A. IMOUKHUEDE  
ON THURSDAY THE 15TH DAY OF DECEMBER, 2016**

**B E T W E E N:** **SUIT NO. B/233/95**  
CHIEF HENRY UYI OBASOYEN ..... CLAIMANT

AND

1. MR. ANTHONY OKUNGBOWA  
2. MR. NOSA ENOTORUWA ODIASE ..... DEFENDANTS

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

The Claimant in his 10th Amended Statement of Claim seeks the following reliefs:

1. A declaration that the Claimant is the person entitled to the Statutory Right of Occupancy in respect of his piece or parcel of land lying, situate at Ifon Road or Benin-Lagos Road, Ward 'L', Uselu Quarters, Benin City which is particularly delineated in survey plan No. TJ.W243B attached to the conveyance made the 27th day of June, 1966 between His Highness, Akenzua II, the Oba of Benin, Benin City of the one part and the Claimant of the other part which is registered as No 20 at page 20 in volume 43 at the Lands Registry in the office at Benin City into which the Defendants have broken and are carrying on building operations thereon without the Claimant's consent on the area verged blue in the dispute survey plan No. JAA/ED/013/06 aforesaid.
2. The sum of N2 Million being special and general damages against the Defendants for their spurious claim to and trespass on the said piece or parcel of land and
3. A perpetual injunction to restrain the Defendants and their servants, agents and privies from any further acts of trespass on the land.

The Defendants Counter Claimed as follows:

- i. A declaration that the 1st Defendant is the person entitled to be given a Certificate of Occupancy in respect of all that piece or parcel of land measuring 30.31 metres by 15.61 metres by 33.13 metres by 15.59 metres shown and delineated in Red on Survey Plan No. KPE4926 filed in this suit. ii. An order of perpetual injunction restraining the Claimant his agents, servants and or privies from further trespassing on the land.

The sum of N2,000,000.00 (Two Million Naira) only being special and general damages against the Claimant for his spurious claims to the Defendants' piece of land and trespass on the said Defendants' piece or parcel of land.

The present Claimant in this case testified and called a witness, His Surveyor one Mr. John Aigbe, while the 1st Defendant testified for himself and on behalf of the other Defendant and called three witnesses.

The Claimant testified that the land in this case is situate at Uselu in Benin City along former Benin Ifon Road, Uselu Quarters in ward 23/L or ward L.

The Claimant testified that the land has boundaries by A.A. AMU by the left when standing at New Lagos Road which is 100 feet by 400feet to Iyoba Road from Uselu Road, by the right hand side, a boundary with Ogiekpolor Imafidon who sold part of his plot of land with house on it to his father.

The Claimant testified that he also has a boundary with Madam Anna Emamule and on the West with Iyoba Road.

The Claimant testified that the land in dispute belonged to his late father, Chief L.A.I. Obasoyen and as the 1st son, he stepped into his shoes after he died and he successfully buried him. The Claimant testified that his late father acquired the entire land at different times. The Claimant testified that his father inherited 100feet by 400feet from his late father and at that time the said land was known as Ogbomaide's compound. The Claimant testified that his late father applied through ward 23L Chairman to Benin Native Authority for the release of his family land aforesaid measuring 100feet by 400feet and it was so released; a copy of the extract from the minutes of the city council meeting dated 22/10/1954, releasing the land was admitted as Exhibit A. The Claimant testified that his late father bought a piece or parcel of land measuring 50ft by 100ft from one Mr. Ogiekpolor Imafidon having boundary with his family land and that on the said land was a house.

The Claimant testified that after the transaction between Mr. Ogiekpolor Imafidon and his late father, Mr. Ogiekpolor Imafidon applied for Oba's Approval through ward L or 23/L Chairman and that the said application was approved on the 25/4/53.

The Claimant testified that Mr Ogiekpolor Imafidon gave the said approval to his late father which was admitted as Exhibit B.

The Claimant testified that his late father bought another portion of land with a Rubber plantation on it from Mr. Imiomoyaheni Odia and was given a receipt dated 24/4/54, which was admitted as Exhibit C.

The Claimant testified that the Oba's approval given to his late father was misplaced by his cousin, Chief Ogieva Emokpare, during a transaction, a photocopy of the Oba's Approval was admitted as Exhibit D.

The Claimant testified that after his late father bought the land he employed the services of licensed surveyor, Mr. T. John who surveyed the entire land and produced a certified true copy in plan No. TJ.W243B dated 26th of May 1964, which plan is attached to Exhibit F. The Claimant testified that in 1976, his late father obtained permit from the Midwestern Government to cut down the twin Obeche Trees which were on part of the land now in dispute.

The Claimant testified that the Obeche trees were inside the part of the land bought from Mr. Imiomoyaheni Odia. The Claimant tendered the receipt the government and the forest guard's note given to his father which was admitted as Exhibits E and E1.

The Claimant testified that after his late father had surveyed his entire land, he entered into a Conveyance with the Oba of Benin and registered the conveyance as No. 20 at page 20 volume 43 at the Land Registry Office in Benin City, a Certified True Copy of the Conveyance dated 27th of June 1966 was admitted and marked Exhibit F. The Claimant testified that the only way land was acquired in Benin City at that time is the process his late father used in acquiring his land. The Claimant testified that as soon as his late father acquired the land, he took possession of the land and started paying special property rates; receipts dated 19/4/68, 28/7/69, 9/2/71, 4/7/73, 4/7/73 and 4/7/73 issued to his late father were admitted as Exhibits G to G5. The Claimant testified that his late father also paid water rates in respect of the property; the receipts dated 1966/67, 1967/68, 1968/69, 29/8/84, 13/2/85 and 2/10/85 were admitted as Exhibits H to H11. The Claimant testified that his late father also paid for water works in respect of the said property; receipts dated 1/2/1966, and 19/5/1976 were admitted as Exhibits J to J3. The Claimant testified that since 1953 and 1955 when his late father acquired the entire land, nobody challenged his title to the land until 1995 when the 1st Defendant started building on part of the land. The Claimant testified that when his late father discovered that the 1st Defendant was building on the land, he briefed his Solicitor, Chief F.O.Esangbedo to write him a letter, copy of the letter was admitted and marked Exhibit K.

The Claimant testified that before the 1st Defendant entered the land, his late father destroyed the mud house on part of the land he bought from Mr. Ogiekpolor Imafidon and moulded cement blocks on the ground in preparation to building a modern house. The Claimant testified that the 1st Defendant used the cement blocks moulded by his late father on the land in laying the foundation of an uncompleted house.

The Claimant testified that his late father filed this case in Court and applied that the Court restrain the 1st Defendant and the application was granted. The Claimant testified that after the 1st Defendant stopped building, his late father and himself noticed that 2nd Defendant started building a small house on the land in dispute.

The Claimant testified that he and his late father went there several times to know who was building the house but did not find out until the 1st Defendant filed his Statement of Defence and claimed that Enotoruwa Odiase, now 2nd Defendant sold the land to him. The Claimant testified that when he went to the land some people also confirmed that it was the 2nd Defendant that was building on the land.

The Claimant testified that after filing this case, he commissioned a licensed surveyor, John Aigbe to carry out a dispute survey plan of his entire land including the one in dispute.

The Claimant testified that when he discovered that it was 2nd Defendant who entered the other part of his land, he commissioned the same surveyor to amend the litigation survey plan. The Claimant testified that in 2008, one female pastor informed him that she bought a part of the land in dispute from 2nd Defendant and his sisters. The Claimant testified that the said Pastor gave him a photocopy of the agreement she entered into with the 2nd Defendant.

The Claimant testified that the agreement was written by 2nd Defendant's late counsel, Barrister Steve Oziengbe a copy of the said Agreement was admitted as Exhibit L.

The Claimant testified that as at 1994, the 2nd Defendant's late Counsel had not been called to the Nigerian Bar and that the 2nd Defendant's late father was still alive at that time. While responding

to the Counter Claim, the Claimant testified that the land the Defendants are laying claim to now, as a plantation with twin Obeche trees when his late father bought it and that no person was living inside the plantation. The Claimant testified that his late father cut down the twin Obeche trees with the permission of the Government and nobody challenged him during the cutting down of the Obeche trees.

The Claimant testified that owners of old houses without approval acquired approvals to cover their properties when the era of approvals came. The Claimant testified that his late father took possession of the land in dispute in 1954, which is a period of 41 years before the Defendants trespassed into it in 1995.

The Claimant testified that the Defendants are not entitled to any of the reliefs sought. Under cross examination, the Claimant stated that the female Pastor is not a tenant, that she told him that she bought the land from the 2nd Defendant and his sister that is why she showed him Exhibit L. The Claimant insisted that 2nd Defendant's late father, Pa Odiase did not build a mud house on the land.

The Claimant further explained that the entire land was acquired differently and that the Rubber trees did not fall within the 100 feet by 400 feet because that had already been acquired.

CW1, Mr. John Aigbe is a licensed surveyor and testified that sometime 1995, the Claimant came with his late father to his office and said that he has a piece or parcel of land situate at Uselu-Lagos Road, Benin City and requested him to prepare a dispute plan for them as part of the land was in dispute in High Court Benin City.

CW1 testified that he followed them to the land and they showed him the boundaries and that he was also shown a Deed of Conveyance covering the land. CW1 testified that he carried out the survey and prepared the plan of which he showed the entire land and the portion in dispute and all the fixtures on the land. CW1 testified that the litigation plan No. JAA/ED/80/95 was produced and he delivered certified true copies of the plan to the Claimant in 1995, Survey Plan dated 10/7/95 was admitted and marked as Exhibit M.

CW1 testified that in 2006, the Claimant came to him and said his father was late and wanted him to make amendment on the dispute plan.

CW1 testified that he prepared an amended survey plan and delivered certified true copies to the Claimant, Survey Plan dated 15/8/2006 was admitted and marked Exhibit N.

CW1 testified that the entire land is verged blue; the area in dispute is marked and verged red; part of the land of the Claimant leased to Texaco now MRS which is not in dispute is verged Green.

CW1 testified that the land transferred to the Claimant by Ogiekpolor Imafidon is verged yellow.

CW1 testified that the boundary neighbors were identified as:

- a. To the South is bounded by Texaco petrol station now MRS and the property of A.A. Amu.
- b. To the west is bounded by Iyoba Road.
- c. To the East is bounded by Uselu-Express Road.
- d. To the North is bounded by property of late Ogiekpolor Imafidon and landed property of Madam Anna Emamule.
- e. That the 1st Defendant has two uncompleted buildings inside the disputed land. And the 2nd Defendant has one house within the disputed land.
- f. That all the features observed on the land are reflected on the plan.

That was the case for the Claimant.

On the 28th of May 2014, the Defendants opened their case and the 1st Defendant testified for himself and on behalf of the other Defendant and called three witnesses.

DW1, Chief Amenaghawon I. Irorere testified that the Claimant's father neither owned the parcel of land in the area now in dispute nor resided in any place near the said area of land now in dispute.

DW1 testified that he knows as a fact that Oba's approval to prospective house builders through the Plot Allotment Allocation Committee of the various wards started only in 1958, before the year 1958 when the grant of Oba Approval started, allotment of parcels of land to developers were done by Odionwere and Elders of particular areas where the parcel of land is situate, save in where the land is situate within the Oba's Palace immediate domain, prospective applicants can apply directly to the Oba. This latter situation also started during the reign of Oba Eweka II. DW1 testified that however, the land in dispute is at Uselu and that land developers within this area, prior to 1958 applied directly to the Odionwere and the Elders for land for the purpose of development.

DW1 testified that the Claimant has title only to a parcel of land measuring 100ft in width by 400ft in length in the land now in dispute as per his customary title document, Exhibit D.

DW1 testified that the rubber crops bought by the Claimant from Imomoyaheni Odia were within the Claimant's parcel of land measuring 100ft width by 400ft length and that he has no title at all to the vast area of land he surveyed and registered as No. 20 page 20 volume 43 of the Lands Registry in Benin City in Exhibit F.

DW1 testified that the parcel of land measuring 50ft in length by 100ft in width in the area where the land in dispute is situate was part of parcel of land measuring 100ft in width by 400ft length contained in Exhibit D. DW1 further testified that that the parcel of land allegedly bought by the Claimant from one Ogiekpolor Imafidon is not contiguous to the parcel of land measuring 100ft width by 400ft in length aforesaid. DW1 testified that the area of land surveyed by the Claimant as per his survey plan No. JJ W243B attached to Deed of Conveyance, Exhibit F, included parcels of land of the 1st Defendant and that of the 1st Defendant's predecessor in title.

DW1 testified that the Claimant has no root of title to the whole vast parcel of land of the Defendants and that of the 1st Defendant's predecessor in title. DW1 testified that the Claimant had never laid claim to the parcel of land now in dispute or to any part thereof until sometimes in 1995, when the Claimant instituted this suit.

DW1 testified that it was not to the knowledge of the Defendants and the 1st Defendant's predecessor in title that the parcel of land now in dispute was within the area of land surveyed by the Claimant.

DW1 testified that the parcel of land allegedly bought by the Claimant from one Ogiekpolor Imafidon is not contiguous with the Claimant's land measuring 100ft in width by 400ft in length at all. DW1 testified that the parcel of land lawfully granted to the Claimant in the area is rectangular in shape, and that it is the parcel of land the Claimant leased out to Texaco Plc, an oil company. DW1 testified that the Claimant has never laid claim to the land which is now in dispute nor exercised any right over same before he instituted this suit. DW1 testified that the Defendants are the owner in possession of all that piece or parcel of land measuring 30.31 metres by 15.61 metres by 33.13 metres by 15.59 metres clearly shown and delineated in Red on Survey Plan No. KPE 926 filed along with the Amended Statement of Defence. DW1 testified that the said parcel of land was acquired by the 1st Defendant for value, via a title document dated the 29th day of November, 1977 from one Enotoruwa Odiase who is the father of the 2nd Defendant. DW1 testified that the said Enotoruwa Odiase inherited a larger parcel of land including the parcel of land now in dispute together with the mud house on a part thereof from his late father Pa. Odiase of blessed memory.

DW1 testified that the area of land verged red on the survey plan was originally part of the landed property of late Pa. Odiase which he acquired over 70 years ago before the advent of obtaining Oba's Approval. DW1 testified that late Pa. Odiase has a mud house on the said parcel of land which is now dilapidated and that Pa. Odiase lived in the house until his death some years ago.

DW1 testified that sometimes in 1950, a part of the said mud house collapsed.

DW1 testified that despite that, Pa. Odiase retained possession, used same and passed ownership to his eldest son, Enotoruwa Odiase.

DW1 testified that he knows as a matter of fact that at no point in time did the 2nd Defendant or any member of his family, sell or by any means transfer any part of the land in dispute to a female pastor or anybody. DW1 testified that the female pastor is a tenant in the said land. DW1 testified that there is no such agreement of transfer transferring the said land in dispute to the female pastor or any other person whatsoever. DW1 testified that at no point in time did the 2nd Defendant or his father ever trespass into anybody's land at Okhoro area and or any other whatsoever, whether in Benin City or any other place to contest ownership of any land with their rightful owner. Under cross examination by Counsel to the Claimant, DW1 testified that he

did not know the father of the Claimant neither did he know one woman called Remi Awala. DW1 further stated that he does not know if she has land in Uselu . DW1 also denied that he knows the female Pastor. DW1 admitted that he knows of the land measuring 100feet by 100feet granted to the father of the 2<sup>nd</sup> Defendant. DW1 stated that the father of the 2<sup>nd</sup> Defendant gave 50feet by 100feet to the 1st Defendant.

DW1 stated that there is a church on the land in dispute and that the father of the 2<sup>nd</sup> Defendant also has a house there. DW1 also stated that 2<sup>nd</sup> Defendant has an uncompleted building there, which he inherited from his father which is over 50 years old.

DW 2, Madam Irene E. Enotoriuwa testified that she knows the Claimant as well as the 1st and 2<sup>nd</sup> Defendants. DW2 testified that the Claimant's father neither owned the parcel of land now in dispute nor resided in any place near the said area of land now in dispute.

DW2 testified that the Claimant has title only to the parcel of land measuring 100ft in width by 400ft in length in the land now in dispute as per his customary title document. DW2 testified that she knows as a fact that Oba's approval to prospective house builders through the Plot Allotment Allocation Committee of the various wards started only in 1958. DW2 testified that before the year 1958 when the grant of "Oba's Approval" started, allotment of parcel of land to developers were done by Odionwere and Elders of the area where the parcel of land is situate, except where the land is situate within the immediate domain of the Oba's Palace, then prospective Applicants can apply directly to the Oba. DW2 testified that started during the reign of Oba Eweka II. DW2 testified that the land in dispute is at Uselu and that land developers within this area, prior to 1958 applied directly to the Odionwere and Elders for land for the purpose of development. DW2 testified that the parcel of land measuring 50ft in length by 100ft in width in the area was part of parcel of land measuring 100ft in width by 400ft contained in the Claimant's customary title document. DW2 testified that the parcel of land allegedly bought by the Claimant from one Ogiekpolor Imafidon is not contiguous to the parcel of land measuring 100ft in width by 400ft in length aforesaid. DW2 testified that the rubber crops bought by the Claimant from Imonoyaheni Odia were within the Claimant's parcel of land measuring 100ft width by 400ft length and that he has no title at all to the vast area of land he surveyed and registered as No. 20 page 20 volume 43 of the Lands Registry in Benin City. DW2 testified that the area of land surveyed by the Claimant as per his survey plan No. JJW243B attached to Deed of Coveyance dated the 27<sup>th</sup> day of June, 1966 and registered as No. 20 page 20 volume 43 of the lands registry, Benin City, included parcels of land of the 1st Defendant and that of the 1st Defendant's predecessor in title.

DW2 testified that the Claimant has no root of title to the whole vast parcel of land of the 1st Defendant and that of the 1st Defendant's predecessor in title. DW2 testified that the Claimant had never laid claim to the parcel of land now in dispute or to any part thereof until sometime in 1995, when the Claimant instituted this suit. DW2 testified that it was not in the knowledge of the 1<sup>st</sup> Defendant and the 1st Defendant's predecessor in title that the parcel of land now in dispute was within the area of land surveyed by the Claimant.

DW2 testified that the parcel of land lawfully granted to the Claimant in the area is rectangular in shape, and that it is the parcel of land the Claimant leased out to Texaco Plc, an oil company.

DW2 testified that the Defendants are the owner in possession of all that piece or parcel of land measuring 30.31 metres by 15.61 metres by 33.13 metres by 15.59 metres clearly shown and delineated in Red on Survey Plan No. KPE 926 filed along with the Amended Statement of Defence.

DW2 testified that the said parcel of land was acquired by the 1st defendant for value via a title document dated the 29th day of November, 1977 from one Enotoruwa Odiase who is her father and the father of the 2nd Defendant. DW2 testified that her father Enotoriuwa Odiase inherited a larger parcel of land including the parcel of land now in dispute, together with the mud house on a part thereof from his late father Pa. Odiase, who is her grandfather. DW2 testified that the area of and verged red on the survey plan was originally part of the landed property of her late grandfather Pa. Odiase which he acquired over 70 years ago before the advent of obtaining Oba's Approval.

DW2 testified that her late grandfather Pa. Odiase has a mud house on the said parcel of land which is now dilapidated and that Pa. Odiase lived in the house until his death some years ago. DW2 testified that sometimes in 1950 a part of the said mud house collapsed. DW2 testified that despite that, her grandfather Pa. Odiase retained possession, used same and passed ownership to his eldest son, Enotoruwa Odiase, who is her father. DW2 testified that she knows as a matter of fact that at no point in time did the 2nd Defendant or any member of her family sell or by any means transfer any part of the land in dispute to a female pastor or anybody. DW2 testified that the female pastor is a tenant in the said land.

DW2 testified that there is no such agreement of transfer transferring the said land in dispute to the female pastor or any other person whatsoever.

DW2 testified that at no point in time did the 2nd Defendant or her father ever trespass into anybody's land at Okhoro area.

Under cross examination by Counsel to the Claimant, DW2 stated that there is a part of the land in dispute which she inherited from her father measuring 50feet by 135feet. DW2 stated that there is a prophetess, Aderuga Awala aka Aimerovbiye Remi who is a tenant on the land. DW2 stated that her late father put her on the land. DW2 stated that the church is still there. DW2 stated that her late father transferred the land to the 1st Defendant in 1977. DW2 stated that 2nd Defendant does not own the land where the prophetess rented.

1st Defendant, Mr. Anthony Okungbowa gave evidence and testified that he does not know the Claimant or his late father who originally instituted this case. 1st Defendant testified that the Claimant's father neither owned the parcel of land in the area now in dispute nor resided in any place near the said area of land now in dispute.

1st Defendant testified that he knows as a fact that Oba's Approval to prospective house builders through the Plot Allotment Allocation Committee of the various Wards started only in 1958.



1st Defendant testified that before the year 1958 when the grant of 'Oba's Approval' started, allotment of parcel of land to developers was done by Odionwere and Elders of the particular area where the parcel of land is situate. 1st Defendant testified that except where the land is situate within the Oba's Palace immediate domain, then prospective Applicants can apply directly to the Oba.

1st Defendant testified that this practice started during the reign of Oba Eweka II. 1st Defendant testified that the land in dispute is at Uselu, and that land developers within this area prior to 1958 applied directly to Odionwere and the Elders for land for the purpose of development.

1st Defendant testified that the Claimant has title only to a parcel of land measuring 100feet in width by 400 feet in length in the land now in dispute as per his Customary title document (i.e. Oba's Approval) dated the 10th day of March, 1955 which is Exhibit D. 1st Defendant testified that the rubber crops bought by the Claimant from Imomoyaheni Odia were within the Claimant's parcel of land measuring 100feet width by 400feet length and that he has no title at all to the vast area of land he surveyed and registered as No. 20 page 20 volume 43 of the Lands Registry in Benin City.

1st Defendant testified that the parcel of land measuring 50ft in length by 100ft in width in the area where the land in dispute is situate, was part of parcel of land measuring 100ft in width by 400ft length as per the Claimants customary title document approved for him on the 14th day of April, 1955, Exhibit D and that the parcel of land allegedly bought by the Claimant from one Ogiekpolor Imafidon is not contiguous to the parcel of land measuring 100ft width by 400ft in length aforesaid.

1st Defendant testified that the area of land surveyed by the Claimant as per his survey plan No. JJW243B attached to Deed of Conveyance dated the 27th day of June, 1966 and registered as No. 20 page 20 volume 43 of the Lands Registry, Benin City, Exhibit F included his own parcel of land and that of his predecessor in title.

1st Defendant testified that the Claimant has no root of title to the whole vast parcel of land as the land in dispute belongs to him.

1st Defendant testified that the Claimant had never laid claim to the parcel of land now in dispute or to any part thereof until sometimes in 1995, when the Claimant instituted this suit.

1<sup>st</sup> Defendant testified that it was not to his knowledge neither was it to the knowledge of his predecessor in title nor to the knowledge of the 2nd Defendant, that the parcel of land now in dispute was within the area of land surveyed by the Claimant.

1st Defendant testified that the parcel of land allegedly bought by the Claimant from one Ogiekpolor Imafidon is not contiguous with the Claimant's land measuring 100ft in width by 400ft in length at all.

1st Defendant testified that the parcel of land lawfully granted to the Claimant in the area, is rectangular in shape, and that is the parcel of land the Claimant leased out to Texaco Plc, an oil company.

1st Defendant testified that the Claimant has never laid claim to the land which is now in dispute nor exercised any right over same before he instituted this suit. 1st Defendant testified that he is the owner in possession of all that piece or parcel of land measuring 30.31 metres by 15.61 metres by 33.13 metres by 15.59 metres clearly shown and delineated in Red on Survey Plan No. KPE 926 filed along with the Amended Statement of Defence. 1st Defendant testified that the said parcel of land was acquired by the him for value via a title document dated the 29th day of November, 1977 from Pa. Enotoruwa Odiase who is the father of the 2nd Defendant, the document was admitted and marked as Exhibit 'P'. 1st Defendant testified that the said Enotoruwa Odiase inherited a larger parcel of land including the parcel of land now in dispute together with the mud house on a part thereof from his late father, Pa. Odiase of blessed memory.

1st Defendant testified that the area of land verged red on the survey plan was originally part of the landed property of late Pa. Odiase which he acquired over 70 years ago before the advent of obtaining Oba's Approval. 1st Defendant testified that late Pa. Odiase has a mud house on the said parcel of land which is now dilapidated and that Pa. Odiase lived in the house until his death same years ago. 1st Defendant testified that sometimes in 1950 a part of the said mud house collapsed. Despite that, Pa Odiase retained possession, used same and passed ownership to his eldest son, Enotoruwa Odiase.

1st Defendant testified that he knows as a matter of fact that at no point in time did the 2nd Defendant or any member of his family sell or by a means transfer any part of the land in dispute to a female pastor or anybody. 1st Defendant testified that the female pastor is a tenant in the said land. Quit Notice dated 4th of November, 2003 was admitted and marked Exhibit 'Q', photocopy of letter dated 1st of September 2010 was admitted as Exhibit 'R', while photocopy of tenancy agreement dated 3rd of July, 2002 was admitted and marked Exhibit 'R1'. 1st Defendant testified that there is no such agreement of transfer transferring the said land in dispute to the female pastor or any other person whatsoever.

1st Defendant testified that at no point in time did the 2nd Defendant or his father ever trespass into anybody's land at Okhoro area and or any other area whatsoever whether in Benin City or any other place.

Under cross examination by Counsel to the Claimant, 1st Defendant stated that he does not know the year the land was given to 2nd Defendant's father but that he grew up to meet the land there. 1st Defendant stated that it was the Oba of Benin who gave the land to 2nd Defendant's father. 1st Defendant stated that he does not know the Claimant or his father neither does he know his parcel of land. 1st Defendant stated that the 2nd Defendant's father had a four room structure where he was staying.

1st Defendant stated that he did not survey the land before he bought the land from 2<sup>nd</sup> Defendant's father. 1st Defendant stated that he knows one Mr. Imiomoyaheni Odia but that he was not there when the late father of the Claimant and Mr. Odia went into any transaction. 1st Defendant stated that he knows one Ogiekpolor Imafidon and said that it is true that Messrs Odia and Imafidon had land around the area in dispute. DW3, one Sunday Enodolormwanyi gave evidence which corroborated the evidence of the 1st

Defendant and the other Defence Witnesses. DW3 in his evidence stated he knows the Claimant as well as the 1st and 2nd Defendants in this case. DW3 stated that the Claimant's father neither owned the parcel of land in the area now in dispute nor resided in any place near the said area of land now in dispute. DW3 stated that the Defendants are the owner in possession of all that piece or parcel of land measuring 30.31 metres by 15.61 metres by 33.13 metres by 15.59 metres clearly shown and delineated in Red on survey plan No. KPE 926 filed along with the Amended Statement of Defence.

DW3 stated that the survey plan was made by one Surveyor T.K. Ikpeji, who is now dead, which was admitted and marked as Exhibit S.

That was the case for the Defence Counsel to the parties filed written addresses and due to the sheer volume of their written addresses, I am unable to reproduce all their submissions. I will however refer to their submissions during my evaluation of the evidence presented in this case. Counsel to the Defendants formulated the following issues for determination:

1. Whether the Claimant has been able to establish his Claims on the state of pleadings and evidence before court.

arising from issue one are other sub-issues which are:

(i) Whether the total land acquired by the Claimant as per his documents of title extends to the land of the Defendants in this case.

(ii) Whether the Claimant has been able to prove his case to be entitled to the declaration and damages sought before this Honourable Court.

2. Whether the Defendants have not established by preponderance of evidence to the counter claim sought before this court.

While the Counsel to the Claimant also formulated the following issues for determination:

1. Whether in the consideration of all the documentary and oral evidence before this court, the Claimant validly acquired the land in dispute.

2. Whether the Claimant has a better root of title than the Defendants.

3. Whether in the consideration of the totality of evidence before this honourable Court, the Claimant is entitled to reliefs sought in his Statement of Claim.

I think a consideration of issue no 2 would suffice to come to a decision in this case: 'Whether the Claimant has a better root of title than the Defendants.'

The law is well settled that a party seeking a declaration of land must prove his title to the said land in one of the following ways:

i) By traditional evidence

ii) By production of documents of title

iii) By acts of possession and enjoyment of the land

iv) By acts of a person claiming the land

v)By proof of possession of connecting or adjacent land.

See *Idundun V Okumagba* 1976 10 SC 227

I would make the following observations:

1st Defendant in his evidence admitted that the property he is laying claim to is already registered as No. 20 page 20 volume 43 of the Lands Registry in Benin City, which is Exhibit F. Exhibit F was Registered in the Lands Registry as far back as 16th of July 1966. The survey plan no JJW243B attached to the Conveyance is dated attached to Deed of Conveyance dated the 27th day of June, 1966 is dated 26th of March 1964.

On 1st Defendant's assertion that Exhibit F included parcels of land of the 1st Defendant and that of the 1st Defendant's predecessor in title, I find the 1st Defendant's assertion incredulous and very difficult to believe.

I hold that the Defendant's assertion is too late in the day, Exhibit F was registered on the 16th of July 1966. I find that the 1st Defendant is only making this allegation after Claimant sued them for trespass in 1995, a clear 29 years after and I so hold.

I hold that the evidence of DW1 and the 1st Defendant is an attempt to use oral evidence to contradict written evidence which dates back to 1966 which is contrary to Section 128 of the Evidence Act. It is trite law that oral evidence cannot be used to exclude documentary evidence.

In the case of *Ogundele v. Agiri* (2009) 18 NWLR (Pt. 1173) 219 S.C. MUNTAKA COOMASSIE, J.S.C held inter alia that "It is trite law that oral evidence is inadmissible to contradict the contents of a document. In other words oral testimony cannot be used to state the content of a document. S. 132(1) of the Evidence Act; and no extraneous matter can be imported into the record of proceedings. See *Union Bank of Nigeria Ltd v. Ozigi* (1994) 3 NWLR (pt.333) 385; see also *Nnubia v. A.G. Rivers State* (1999) 3 NWLR (pt. 593)82. This is so, because documents when tendered and admitted in court are like words uttered and do speak for themselves. They are more reliable and authentic than words from the vocal cord of man as they are neither transient nor subject to distortion and miss-interpretation but remain permanent and indelible through the ages"

I find as a fact that Exhibit F, the Deed of Conveyance dated the 27th day of June, 1966 and registered as No. 20 page 20 volume 43 of the Lands Registry, Benin City, included parcels of land of the 1st Defendant and that of the 1st Defendant's predecessor in title.

The Defendant in their evidence and address submitted that the evidence of the Defendants to the effect that the grant of Oba's approval as a means of acquiring title to land started around 1958, they have therefore submitted that Exhibits 'B' and 'D' are not reliable documents particularly in view of Defendants unchallenged contention that the advent of Oba's approval started around 1958 and not before then.

I have carefully examined Exhibits B and D and I find that these Exhibits do not have the

signature of the Oba of Benin; Exhibit D which was dated 10th of March 1955, is an application by A.I.Obasoyen and Sons of 10 Western Boys High School Road, Benin City through the Ward L. Chairman to the Benin Native Authority, Benin City was approved by the Benin Native Authority Division on the 14<sup>th</sup> of April 1955 while Exhibit B, dated 7th of March 1953 was also approved by the Native Authority on the 25th of April 1953. Exhibits B and D do not however stand alone.

I take judicial notice of the processing of title documents at the Office of the Lands Registry at Benin City and I hold that these documents have gone through the scrutiny of the land experts at the Ministry of Lands and Survey before the land in question was duly registered as No. 20 at Page 20 and Volume 43 of the Deed Registry. I think that if the Defendants are serious about their contentions that the Claimant's documents though registered are improper, the proper convincing witnesses to have been called, would have been officials of the Lands Registry Benin City at the Ministry of Lands and Survey who would have examined the documents and given their expert opinion.

I find that the Defendants in this case the Defendants did not produce expert witness to prove their assertion that the Claimant's registered documents are improper. I find the evidence of DW1 and 1<sup>st</sup> Defendant unreliable and an afterthought in that respect unreliable and I so hold.

I find therefore that the evidence of the 1st Defendant supports the case of the Claimant on the genuineness of his title documents and I so hold. Also, the Claimant further took more steps to register his interest on the land after acquiring same without challenge from anybody. There is evidence before this Court of long and peaceful possession by the Claimant before the trespass of the Defendants.

I find from the Claimant's evidence in Court, the vivid descriptions of Exhibits A, B, C and D in conjunction with the evidence of Claimant's witness .the Surveyor and Exhibits M and N tendered by him, the parcels of land of the Claimant are:

- i. 100 feet by 400 feet inherited from his late father,
- ii. 50 feet by 100 feet acquired from one Mr. Ogiekpolor Imafidon and
- iii. The Plantation bought from Mr. Imiomoyahani Odia were acquired differently and are therefore distinct and separate from each other.

The evidence before this Court is that after Claimant's late father had acquired all the property separately, he commissioned a licensed surveyor to survey all together and thereafter entered into a Conveyance with the Oba of Benin in compliance with the settled customary law that all land in Benin before the Land Use Act 1978, was vested in the Oba of Benin and it was he alone that could grant any piece or parcel of land to individuals.

Also, the Claimant's father went further to Register the Conveyance between himself and the Oba at the Land Registry Office at Benin as No. 20 at Page 20 Volume 43 in compliance with the Land Registration Law. The Claimant gave evidence to that effect and tendered Exhibit F. Exhibit F includes among others the property survey Plan No TJW 243B which was made as far back as 1966.I find that the documents were made more than 29years before this cause of action arose.

The Claimant led credible evidence of acts extending over a sufficient length of time and which acts are numerous and positive enough to warrant the inference of exclusive ownership of such land, it will be safe to conclude that a party exercising such acts, is the exclusive owner of the land. I refer to Exhibits A, B, C, D, E, E1, G-G5, H-H11 and J-J3 tendered by the Claimant, which include permission to cut down the trees on the land, payment of all rates and retained possession of the land from 1954 to 1995 when the cause of action arose.

1st Defendant denied in paragraph 22 of his deposition which he adopted as his evidence in Court:

“That there is no such agreement of transfer transferring the said land in dispute to the female pastor or any other person whatsoever.”

1st Defendant specifically denied that the Odiase family never sold any land to any female Pastor. I believe the Claimant when he said that he obtained Exhibit L, from a Prophetess Remi Awanla, who alleged she bought land from the Odiase Family. I find the evidence of the 1st Defendant to be very inconsistent, incredulous and unreliable and I so hold.

The Supreme Court held in the case of *OLAGUNJU V. ADESOYE & ANOR* (2009) 170 LRCN 1 AT 5 RATIO 2 “it is settled therefore that a plaintiff in a declaration of title, who succeeds (as in the instant case leading to this appeal) in establishing that such acts, not only extend over a sufficient length of time, but also that they are numerous and positive enough to warrant the inference of exclusive ownership of such land, as and will be entitled to declaration. It will be safe and imperative to conclude that the party exercising such acts is the exclusive owner”

I have carefully examined the documents tendered by the Claimant and I find that the Claimant was in peaceful possession of the land in dispute for nearly 30 years before the Defendants came into the scene with their own claim. The only title document tendered by the Defendants, Exhibit P is dated 20th of November 1977. I find as a fact that the Claimant’s evidence and Exhibits A, B, C, D, E, F, G - G 5, H - H11, and J - J3 show that the Claimant has been in exclusive and peaceful possession of the property since 1954 until 1995 when the cause of action arose and I so hold.

Claimant tendered original documents dating back to 1955, the exhibits showing ownership and peaceful possession of the land. From the consistent and credible evidence led by the Claimant, I find that the Claimant has done everything necessary to give validity to the documents and I so hold. In the case of:

*ADELAJA VS ALADE* (1999) 68 LRCN 784 at 791

The Supreme Court held that:

“An Instrument is said to be duly executed when all acts necessary to render it complete and give it validity have been performed”

I hold that the Claimant has established through documentary and oral evidence that his predecessor in title acquired the land under Benin Customary law. I hold that the Claimant has proved a better title to the land in dispute than the Defendants in this case. Judgment is given in favour of the Claimants and I make the following orders :

1. A declaration that the Claimant is the person entitled to the Statutory Right of Occupancy in respect of his piece or parcel of land lying situate at Ifon Road or Benin-Lagos Road, Ward 'L', Uselu Quarters, Benin City which is particularly delineated in survey plan No. TJ.W243B attached to the Conveyance made the 27th day of June, 1966 between His Royal Highness, Akenzua II, the Oba of Benin, Benin City of the one part and the Claimant of the other part which is registered as No 20 at page 20 in volume 43 at the Lands Registry in the office at Benin City into which the Defendants have broken and are carrying on building operations thereon without the Claimant's consent on the area verged blue in the dispute survey plan No. JAA/ED/013/06 aforesaid.

2. The sum of N2 Million being special and general damages against the Defendants for trespass on the said piece or parcel of land and

3. A perpetual injunction restraining the Defendants their servants, agents and privies from any further acts of trespass on the land.

HON. JUSTICE N. A. IMOUKHUEDE,  
J U D G E.  
15/12/2016

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