

**IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION, HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE E. F. IKPONMWEN –
CHIEF JUDGE**

FRIDAY, MARCH 10TH 2017

SUIT NO. B/485/11

BETWEEN:

1. MRS. VICTORIA OGBEIDE IDEMUDIA }
2. HON. JUDE ISE-IDEHEN } í í CLAIMANTS

AND

1. MR. CHRISTOPHER OBANOR }
2. MR. ORIAKHI WILSON } í í í í DEFENDANTS

J U D G M E N T

The Claimants instituted this action vide their writ of summons dated 7th of July, 2011. By paragraph 38 of the extant joint statement of claim filed on 22/4/2014, the claimants claim against the Defendants jointly and severally as follows:

- (a) A declaration that the 2nd claimant is the owner and in lawful possession of the said piece of land in dispute measuring 200 feet by 200 feet delineated in survey beacon number SC/EDJ6822ZY, SC/EDJ6823ZY, SC/EDJ6824ZY and SC/EDJ6825ZY dated 27/6/2011 and litigation survey plan No. JAO/ED/2014/08.

- (b) The sum of ₦500,000.00 (five hundred thousand Naira) being special and general damages against the Defendants in that the defendants and their agents have been carrying out various trespassory acts against the 2nd claimant's parcel of land and doing other acts inconsistent without the 2nd claimant's consent and/or authority.
- (c) Perpetual Injunction restraining the defendants, their agents, servants and privies from committing any further acts of trespass unto the said parcel of land or doing anything inconsistent with the 2nd claimant's land.

By paragraph 21 of the extant joint statement of defence filed on 01/12/2016, the 2nd defendant counter claim against the claimants as follows:

- (i) A declaration that the 2nd defendant is the deemed holder and entitled to the Statutory Right of Occupancy over all that piece or parcel of land measuring 200 feet by 200 feet bounded by Survey Pillars No. BH765, BH766, BH767 and BH768 lying, being and situate at Oriokpa Village Area, Ward 37/B, Benin City particularly shown in property survey plan No. OSA/235/BD77 dated 12th September, 1977 and Litigation Survey Plan No. ISO/ED/D30/2013.

- (ii) A declaration that the acts of the 1st claimant in purporting to sell, transfer or convey the said land to the 2nd claimant in 2009 without the authority and consent of the 2nd defendant and the 2nd claimant's subsequent act of entering the land and/or possession of the land is unlawful and amounts to trespass.
- (iii) SPECIAL DAMAGES of ₦102,000.00 (one hundred and two thousand naira) for the 2nd defendant's trips of sand and granite on the land used by the 2nd claimant at the wake of his trespass into the land.
- (iv) GENERAL DAMAGES of ₦500,000.00 for trespass.
- (v) AN ORDER of perpetual Injunction restraining the claimants whether by themselves, their agents, servants, assigns, representatives, privies, cohorts and anybody connected with the claimants in any manner whatsoever and howsoever from further entering, trespassing and/or doing anything expressive or indicative of interest in the land.

The issues arising in this case are as follows:

- (1) Whether the land in dispute was allocated by the Oriokpa Plot Allotment Committee, Ward 37B to the late father of the 1st claimant, Pa Edokpolor Ogbeide or the 2nd defendant.

- (2) Whether the 1st defendant was not the Assistant Secretary and Pointer of the defunct, Oriokpa Plot Allotment Committee, Ward 37B, Benin City and whether the 2nd defendant/counter claimant derived his title to the land in dispute from the 1st defendant as alleged by the claimant.
- (3) Whether under the Benin Customary Law, the Community land pointer (though not conceding that the 1st defendant was ever one) can allocate land to anybody without the instruction of the Odionwere and elders of Oriokpa Community.

The claimants opened their case on 17/6/2013 with CW1, Mr. Samson Odiase adopting his statement on oath filed on 27/11/2012. He identified the Oba's approval issued to one Edokpolor Ogbeide. He does not know the 2nd defendant. The Oba's approval shown him was not signed by him. He is the Secretary of Oriokpa Community and the late Edokpolor Ogbeide (1st claimant's father) is a relative as well as an indigene of the community. Around 1972, late Edokpolor Ogbeide applied for a piece of land from the community in the location he farmed which is now in dispute. The community sent the then land pointer, late Richard Ebomwonyi and his assistant David Ebomwonyi to go and inspect the farm and count the number of plots. They reported that the land contained 38 plots of 100 feet by 100 feet. The council of elders/plot allotment committee then approved (four

plots) 200 feet by 200 feet for 1st claimant's father and he gave the 1st claimant's father the application form to fill and directed the pointer to demarcate it out and point the boundaries which was done. The elders and himself signed the application form which he took to the Oba's Palace for approval and signature after which he handed the Oba's approval to the late Edokpolor Ogbeide. The 1st defendant is from Ugiokhuen and has never been his assistant secretary nor secretary in Oriokpa. 1st defendant has never been a pointer in Oriokpa. The 1st claimant inherited the land in dispute from her late father, Edokpolor Ogbeide.

Under cross examination by Osifo Esq., CW1 stated that he knows the Oriokpa Plot Allotment Committee which was constituted in 1972 and not 1970 with nine members including himself. His father was the chairman of the Plot Allotment Committee. His father and 1st defendant's mother are not blood siblings but distant relations. 1st defendant, David Ebomwonyi was living in his father's house and they were all in school when the Plot Allotment Committee was constituted. The Oba started approving allocations from Oriokpa in 1972 and not 1974.

As a secretary, he was not going to the bush to demarcate land allocated. It is usual for the allottees of land to pay for the crops on the land. He does not know when the 1st claimant's father's farm land was allocated. 1st claimant received the compensation for the crops on the land. He knows

the land and some of the allottees like his mother and Esther Okundolor etc. 1st claimant's father died in 1977 not 1969. 1st claimant's father had not died when the committee was allocating his farm land. It is not true that himself and some others formed another committee in 1983. The committee still allocates land. The allocation of 1st claimant's father's farm land was not done recently. The Oba of Benin is not signing allocations of land and it was the Oba Akenzua that signed theirs. It is not correct that application and approvals given recently are back dated by himself and others. He does not know Mr. G.M. Ogiefa, he is not one of the allottees in 1974. It is not true that he requested for ₦40,000.00 (forty thousand Naira) from Ogiefa when he wanted him to testify on his behalf in court in a case of trespass to Mr. Ogiefa's land when 2nd defendant reported trespass to his land to the Police at State C.I.D. about three years ago. He summoned the 2nd defendant to the committee meeting but he refused to attend.

CW2, Mr. Airuoyuwa Osayi adopted his statements on oath filed on 27/11/2012 and 3/11/2014. He is the Odionwere of Oriokpa Community and he testified along the same lines as CW1. He stated further that upon being aware that the 1st and 2nd defendants are laying claim to the land in dispute, he met the 2nd defendant for the first time at the State C.I.D. and he told him that the 1st defendant sold the land to him. CW2 called a meeting in the community to ascertain ownership of the land as directed by the Police

but the defendants refused to show up. After the fifth adjournment, the claimants were asked to state their case and the committee affirmed their ownership of the land. The defendants also failed to show up at the Oba's Palace after several summons. The 1st defendant is from Ugiokhuen, not Oriokpa though his mother is from there. 1st defendant has never been their land pointer or assistant secretary in Oriokpa community. Occasionally, late Richard Ebomwonyi the land pointer, his assistant David Ebomwonyi hired some casual labourers to help them do some manual labour in the bush and the 1st defendant was at times one of those recruited. 1st defendant is a land pointer for his village, Ugiokhuen. The Oriokpa committee never allocated land to the 2nd defendant.

Under cross examination by Osifo Esq., CW2 stated that he cannot tell if the 1st claimant was the person who received compensation for the rubber trees from the allottees. Not all members of the committee sign the Oba's approval and he did not sign the Oba's approval of 1st claimant's father. It is not the Oba of Benin that appoints the Plot Allotment Committee but the community that appoints them. The committee is no longer in existence with the promulgation of the Land Use Act. The father of the 1st claimant died in 1969.

1st claimant, Mrs. Victoria Ogbeide Idemudia on 17/7/2013 adopted her statement on oath filed on 9/5/2013. She stated that her late father, Pa

Edokpolor Ogbeide was an indigene of Oriokpa Community **and had a farm land in the community** but title to the land resided in the community. Those who had boundary with her father's farmland were late Mr. Igbinogun and Mr. Ekpeninogbekpo. She usually accompanied her late father to the farmland and there was only one power line located at Ugbor Village Area. The second power line was recently constructed in the early eighties and her father's farmland was never close to any of the power lines. When Oriokpa Community started allocating land, they approached her late father around 1972 and together they counted the number of plots contained therein. They got 38 plots of 100 feet by 100 feet and from it the community took 34 plots and left 4 plots for her father. The committee gave her late father Oba's approval over the 4 plots in 1972 which is the land in dispute. She states that she inherited the land in dispute in accordance with Bini Customary Law when her father died in 1976 and she exercised acts of possession. When she was in possession of the land in dispute the defendants never laid claim to it. In 2009 she transferred title to the land to the 2nd claimant. She received compensation for the crops on the land. Sometime in 2009/2010, she was invited to Ugbor Police Station and State C.I.D. on account of the land in dispute and was informed that the 2nd defendant was laying claim to the land. The Police later referred it to the Oriokpa Community to arbitrate on it. CW2 and the elders actually invited both parties several times but the

defendants refused to show up. After the fifth time she was asked to state her case and the community/committee affirmed the title given to her late father in 1972. The defendants refused to show up at the Oba's Palace when they were invited in respect of this matter. The 1st defendant has visited her house several times with huge sums of money for her to change her stand in favour of the 2nd defendant but she refused. She tendered exhibits A, B and C.

Under cross examination by Osifo Esq., 1st claimant states that when her father was farming on the land there was no street, it was a bush. Late Ebomwonyi was the chairman of the Plot Allotment Committee. It is not true that it was the 1st defendant that showed her, her father's land. She did not forge Exhibit A with the Oriokpa community. She knows Godwin Osagie, he wanted to buy the land in dispute but he could not pay for it. He arrested the workers of the 2nd defendant on the land. At Ugbor Police Station, she was invited and she told them she sold the land to Godwin Osagie but he did not pay her. The Police then concluded that the land does not belong to Godwin Osagie. 2nd defendant claimed at the station that 1st defendant sold the land to him not her.

CW3, Mrs. Rose Ogbeide Osaze on 17/7/2013 adopted her statement on oath filed on 9/5/2013. She stated therein that after her father's demise in 1976, the family shared his property on conclusion of his burial rites in

accordance with Bini Native Law and Custom. The family shared the land in dispute to the 1st claimant who is her elder sister. She is aware that the 1st claimant transferred the land in dispute to the 2nd claimant. The 2nd defendant has no legal claim known to them in connection with the land in dispute. **The land in dispute was part of their father's farmland in Oriokpa community.**

Under cross examination by Osifo Esq., CW3 stated that her father acquired the land in 1963 through the Oriokpa Plot Allotment Committee. Her father died in 1977 not 1969. The land is not near power line. She was not present when 1st claimant transferred the land to Godwin Osagie but 1st claimant told her **and she accented to it. Her elder sister (1st claimant) has the document of sharing.**

2nd claimant, Hon. Jude Ise-Idehen on 20/11/2013 adopted his statement on oath filed on 27/11/2012, which stated the same evidence as to how 1st Defendant acquired the land in dispute. By virtue of an agreement of transfer made in 2009 between himself and the 1st claimant, he became the owner in possession of the land in dispute with plan number GMS:882:2011. After the transfer, he deposited various building materials on the land and erected a fence round the land. To his surprise, the defendants started laying claim to the disputed land and prevented him and his workers from continuing the construction work. He reported the matter

at Ugbor Police Station and while they were there, the defendants brought Policemen from the State Criminal Investigation Department to stop them from working and invited them to their office. The State C.I.D., the Police told the Odionwere and elders of Oriokpa to invite both parties to the community and determine who owns the land between himself and the defendants and report back to them. The elders of the community invited both parties but the defendants refused to turn up and after 5 adjournments, they asked the 1st claimant to state her case and declared that the land in dispute is the land they allocated to the late Edokpolor Ogbeide (1st claimant's father). The matter was also reported at the Oba's Palace but again the defendants refused to honour the invitation from the Oba's Palace. He tendered exhibit D.

Under cross examination by Osifo Esq., 2nd claimant stated that he is not from Oriokpa village and it was in 2009 that he had his first contact with 1st claimant over the land in dispute. He did not know the 1st claimant's late father. He did not see any document of inheritance of the land by the 1st claimant before he purchased it. When he was negotiating with 1st claimant, she did not disclose to him that there was already an adverse claim to the land. 1st claimant did not tell him that Godwin Osagie had in 2008 reported a dispute over the land at Ugbor Police Station. At the time he took possession of the land there were no trips of sand.

CW4, James Amadin Osazuwa on 01/7/2014 adopted his statement on oath filed on 26/2/2014. He stated that he is a registered surveyor and that sometime in January, 2014, the claimants i.e. Hon. Jude Ise-Idehen and 1st claimant commissioned his firm to carry out litigation survey in respect of the land in dispute. The claimants took him to the land and showed him its boundaries and features. The land in dispute is measuring 200 feet by 200 feet (two hundred feet by two hundred feet) and is lying situate and being at Oriokpa village, behind the Government Reservation Area, Ward 37/B, Benin City. It is bounded by IgbinoBaro Street, Emevon Street and Ekhorose Street. The 1st claimant showed him her late father's title documents to the land in dispute and the 2nd claimant also showed him his property survey plan number GMS: 882:2011 dated 27/6/2011. The 1st claimant also showed him the entire parcel of land consisting of all 38 plots. **The 1st claimant also took him to the 2nd Power Line where her late father also had a small farm a long time ago** and he took measurement of same. The 2nd claimant also showed him the dwarf block fence he erected on the land in dispute, while the 1st claimant showed him the remnants of the crops from her late father's farm like plantain and banana. He then produced the litigation survey plan exhibit E.

Under cross examination by Osifo Esq. CW4 stated that he visited the land early January, 2014 and produced the plan in February, 2014. The

reference in exhibit E contains the information given to him by the claimant and what he saw physically. Reference number 2 (two) is based on what the 1st claimant told him and he confirmed with the Obaø approval. He sees exhibit B. The area verged blue is the area of farmland of 1st claimantø father allocated by the community. He saw the ant hill as indicated but did not see any shrine. He saw a survey beacon No. SC/EDJ6825ZY. Surveyorsø plant survey beacons when carrying out property surveys with the type of numbers. He did not see any other survey beacons.

At the close of the claimantsø case, the defendants opened their case on 12/2/2016 with 1st Defendant, Christopher Obamor adopting his statement on oath filed on 17/4/20113 and 30/5/2014. He stated that the 2nd Defendant is the owner of the land. In 1971, the 2nd Defendant applied to the Elders/Plot Allotment Committee of Oriokpa Village, Ward 37B, Benin City for the parcel of land measuring 200 feet by 200 feet. He was the assistant Secretary and pointer to the Plot Allotment Committee then. The Plot Allotment Committee members delegated him to go and demarcate the land, measure it and show its boundaries to the 2nd defendant which he did. The members of the Plot Allotment Committee then signed and/or thumb printed on the application. He took the copies to the Obaø Palace for Obaø approval which was granted in 1974 and the 2nd Defendant was told to pay Johnson Erhauyi the owner of the rubbers crops compensation. All the

members of the committee have died except the Secretary, Samson Odiase, Pa Isaac Ebomwonyi and Sunday Osayi. He knows that the 2nd defendant has been in possession of the land since it was allocated to him without opposition from anyone until 2006 to 2009. The 1st claimant's late father Pa Edokpolor Ogbeide was his relation. He was from Ugiokhuen but lived in Oriokpa where he had a farm. He had only two daughters, the 1st claimant and her younger sister. His mother was from Oriokpa village, and he and Samson Odiase grew up in 1st defendant's father's house. In 1978 following the promulgation of the Land Use Act, the Oriokpa Plot Allotment Committee was dissolved. However, Richard Osayi, Samuel Osayi, Samson Odiase and David Ebomwonyi constituted themselves into an illegal Plot Allotment Committee for the purpose of reallocation of already allocated land. 1st claimant's late father's farmland was close to the PHCN Power Line far away from the land in dispute. It was late Johnson Erhauyi that farmed on the land in dispute. Oriokpa Plot Allotment Committee started allocating land in the area of the farmland of the 1st claimant's father in 1976 by which time the 1st claimant's father had already died. There was no time the Plot Allotment Committee counted the number of plots in a farmland (including that of 1st claimant's father) to decide how many plots to allocate. 1st claimant's late father had no Oba's approval for land in Oriokpa village as the one being paraded by the 1st claimant is forged. When trouble started

over the disputed land,, the matter was reported at Ugbor Police Station and State C.I.D. where he testified that the 2nd defendant is the real owner of the land. He never sold the land in dispute to the 2nd defendant or the 2nd claimant. He was not a pointer in Ugiokhuen village but was a pointer in Oriokpa. When the 2nd Defendant engaged the services of surveyor Iyawe to do a litigation survey for him, he was invited, they took the surveyor to the land. He showed the surveyor the area of the farmland of the 1st claimant's father and the lands of some of those allotted in the farmland. He tendered exhibit F and identified 2nd Defendant's Oba's approval.

Under cross examination by Obasuyi Esq., 1st defendant testified that he gave evidence on behalf of the community in the case in exhibit F. He was not given any document to represent the community. He was a witness in Suit No. B/271/2013. He was a pointer in Ugiokhuen village and Oriokpa village.

DW1, Kessington Osifo on 7/3/2016 adopted his statement on oath filed on 17/4/2013. He stated that he is a cousin of the 2nd defendant. Between 1983 to 1985, he lived with the 2nd defendant and his family. He remembered that the 2nd defendant had a land measuring two hundred feet by two hundred feet (200ft by 200ft) at the time situate at Oriokpa village area, Benin City which he used for farming. He accompanied the 2nd defendant and his family to the land on weekends to cultivate the land. It was the 2nd

defendant that disvirgined the land and planted crops on it. No body challenged their ownership of the land and he is surprised that the claimants are now laying claim to same.

Under cross examination by Obasuyi Esq., DW1 testified that the 2nd defendant told him that he acquired the land in the 70s. He was not present when the 2nd defendant acquired the land.

DW2 Egerton Oriakhi on 6/4/2016 adopted his statement on oath filed on 17/4/2013. He stated that the 2nd defendant is his father. It was the 2nd defendant that deforested the land and planted crops therein. Mathew Oriakhi, Kessington Osifo, himself and his siblings usually accompany 2nd defendant to the land in dispute to cultivate same. In 1977 his father (2nd defendant) engaged a licensed surveyor Osaikhiuwu to do a perimeter survey of the land. His father and himself took the surveyor to the land to survey it and planted survey beacons on the boundaries of the land. Sometime in 1983/84, his father engaged a draftsman to prepare building plan. The plan was made and approved for him by the then Bendel State Town Planning Authority and his father also paid for the rubber crops on the land. When his father became the Commercial manager of Bendel Broadcasting Service (now Edo Broadcasting Service) he was unable to attend to the farm and asked one Mr. Ete to watch the land and farm on same. When Mr. Ete left, he asked one Mr. Anthony Cole to watch the land

and also farm on it. The land is bounded by IgbinoBaro Street on one side. Nobody including the claimants opposed or disturbed his father's possession or laid adverse claim to the land. In 2006 when his father wanted to start building he settled the community youth by paying the community development levy. 1st defendant was the pointer who showed his father the land in dispute and also introduced his father to the Youth Chairman. He also deposited ten trips of sand and one trip of granite. He paid a block moulder to mould block. Sometime in 2008, they discovered that some unknown persons trespassed on their land. The trespasser brought Policemen to arrest the block moulder working on his father's land. At the Police Station they discovered that it was a certain Godwin Osagie to whom the 1st claimant sold the land that had arrested the block moulder. His father told the Police that he was the rightful owner of the land, but Godwin Osagie and the 1st claimant refused to turn up. In view of the threats from Godwin Osagie his father briefed the law firm of Eghobamien & Co. to write a petition to the A.I.G. Zone 5, Benin City which was done. The matter was referred to the Police State Criminal Investigation Department (C.I.D.) for investigation. Both parties were invited to the State C.I.D. and advised to stay away from the land until investigation was concluded. Some few weeks later, they discovered that some other person was moulding blocks on the land and they notified the Police at the State C.I.D., Benin who arrested the

workers. It was at the station that they discovered that the workers arrested were working for Hon. Uyi Igbe who 1st claimant had resold the land to and had refunded Godwin Osagie's money to him. He was surprised to see 2nd claimant's name on the Writ of Summons. All through the dispute that was reported at Ugbor Police and State C.I.D. the 2nd claimant never showed up. His father was never invited to the community, Oba's Palace or Police Station to resolve this matter. The Oba's approval of the claimant is forged.

Under cross examination by Obasuyi Esq., DW2 stated that he became aware of the land in dispute between 1975/76. He did not witness when his father acquired the land in dispute. He was eight years in 1974. He saw the documents with which his father acquired the land.

DW3, Moses Airiagbonkpa on 22/7/2016 adopted his statement on oath filed on 27/6/2016. He stated that the defunct Oriokpa Plot Allotment Committee, Ward 37B, Benin City was responsible for recommending applications for allocation of land to the Oba of Benin in the 1970s in Oriokpa village Area. In 1974, he applied to the Oriokpa Plot Allotment Committee for allocation of plot of land measuring one hundred feet by one hundred feet (100ft by 100ft). The assistant secretary/pointer of the committee was Christopher Obanor (1st defendant). The Plot Allotment Committee members told the 1st defendant to go and demarcate the land as well as show him the land which he did. The committee members signed his

application and he was told by them that it would be taken to the Oba's Palace for approval which was granted in 1975. He has taken possession of his land and built on it. At the time he applied for the land, Samson Odiase was the Secretary of the Plot Allotment Committee and he was a Civil Servant. He was not always around, it was the 1st defendant who was actually around doing the job and pointing plots of land to applicants. He tendered exhibit G.

Under cross examination by Obasuyi Esq., DW3 stated that he is not an indigene of Oriokpa. He did not settle at Oriokpa, he acquired a land there that he used for farming. He does not know the 2nd defendant or if he has property in Oriokpa.

DW4, Dr. Mathew Oriri Oriakhi, younger brother of the 2nd defendant testified on 22/7/2016 by adopting his witness statement on oath filed on 27/6/2016. He testified along the same line as DW1 and DW2.

DW5, Mr. Anthony Cole on 02/12/2016 adopted his statement on oath filed on 17/4/2013. He stated that in 1989 he was employed by Mr. Paul Adodo as a security officer in his house at Igbinobaro Street (opposite the land in dispute). One day the 2nd defendant came to inspect the land (in dispute) he introduced himself to him as the owner and asked him to watch over the land for him and to farm on it. He watched over the land and farmed on same between 1989 and 2001. He also allowed people to farm on

the land. Throughout the time he farmed on the land, no body challenged him and there was no dispute over the land.

2nd defendant Oriakhi Wilson on 02/12/2016 adopted his statements on oath filed on 17/4/2013 and 27/6/2016. He testified along the same lines as DW2 and stated further that after the suit was filed against him, he engaged surveyor F.U. Iyawe in 2013 to do a litigation survey of the land. The 1st defendant also showed the surveyor the location of 1st claimant's father's farmland. The 2nd defendant showed the surveyor his title documents before the survey was carried out. At the time the cause of action arose in this suit in 2008, Pa Isaac Ebomwonyi and Sunday Osayi who were members of the defunct Oriokpa Plot Allotment Committee that allocated the land to him were alive, but both of them died during the pendency of this suit. He tendered exhibits H, H1, H2, J, J1, K1, K2, K3 L and M.

Under cross examination by Obasuyi Esq., 2nd defendant stated that 1st defendant did not show him his appointment letter because he did not ask him to. 1st defendant was acting on behalf of the Secretary of the committee who was never around because of the nature of his job. After the approval came he was given two copies. When the approval was given to him he saw that the Secretary had signed. He was not at the meetings because he was never invited. Pa Ebomwonyi and the other persons did not come forward

as his witnesses were threatened with death by Godwin Osagie who first bought the land in dispute.

At the close of evidence, both learned counsel adopted their written addresses on 6/2/2017. In his written address filed on 23/12/2016, E. F. Osifo Esq. of counsel to the defendants adopted the issues for determination in this case as his issues in his written address.

Learned counsel submitted on issue 1 (one) that the onus is on a claimant who seeks a declaration of title to land to satisfy the court on the evidence brought by him that he is entitled to the declaration sought. To this end the claimant must succeed on the strength of his own case and not on the weakness of the defence though in appropriate cases, where the case of the defence supports that of the claimant, the claimant can rely on it in proof of his right to the declaration sought. See **Dim v Enemu** (2009) 10 NWLR (pt. 1149) 353 at 377. In the celebrated case of **Idundun v Okumagba** (1976) 9 ó 10 S.C. 227, the Supreme Court enumerated five ways of proving title to land. They are:

- (a) by traditional history or evidence;
- (b) by documents of title duly authenticated and executed;
- (c) by various acts of ownership numerous and positive and extending over a length of time as to warrant the ownership;

- (d) by acts of long enjoyment and possession of the land; and
- (e) by proof of possession of adjacent land in circumstances which render it probable that the owner of such adjacent land would in addition be the owner of the land in dispute.

See **Aiyeola v Pedro** (2014) 18 NWLR (pt. 1424) 409 at 446.

Although proof of one of the ways enumerated above is sufficient to grant title to the land, the claimants have not proved any of the above ways with cogent, consistent, credible and reliable evidence to enable this court grant their declaration of title. According to him exhibit A is forged and cannot be relied upon by the claimant to be granted their reliefs by the court. Exhibits A and B are inconsistent with each other. The claimants case/evidence is full of contradictions and inconsistencies that this court cannot rely on same or ascribe any probative value to exhibit A. He relied on a plethora of authorities such as **Onwanalu v Uche** (2010) 2 NWLR (pt. 1179) 582; **Odi v Iyala** (2004) 8 NWLR (pt. 875) 270; **Abubakar v Yaradua** (2008) 18 NWLR (pt. 1120) 1 at 153 to 154. He submitted that exhibit C is a fabrication of the claimants to cover their lapses in exhibits A and B. The 2nd defendant and his witnesses adduced consistent, clear, cogent and credible evidence to show that the land was allocated to him by the Oriokpa Plot Allotment Committee, Ward 37/B vide exhibit H.

To prove his title, the party must show that he complied with the procedure for acquiring land by applying through the appropriate Plot Allotment Committee to show that his title document (Oba's approval) emanated from due process. The 2nd defendant has discharged this burden by proving that the land in dispute was approved for him by the Oba of Benin through the Oriokpa Plot Allotment Committee, Ward 37/B, Benin City for the purpose of his counter-claim. See **Okeaya-Inneh v Aguebor** (1970) All NLR 1 at 8 to 9; **Owie v Ighiwi** (2005) 5 NWLR (pt. 917) 184 at 189. Learned counsel urged the court to find that the land was not allocated to the late father of the 1st claimant but was allocated to the 2nd defendant by the Oriokpa Plot Allotment Committee and accordingly grant the 2nd defendant's counter-claim for declaration of title.

Osifo Esq. submitted on issues 2 and 3 that the preponderance of evidence adduced is in favour of the defendants. CW1 and CW2's evidence of who the pointer is was untrue having regards to CW1's testimony under cross examination. David Ebomwonyi was not called as a witness so also other witnesses whose statements on oath were filed by the claimants. There is no explanation for the claimant's failure to call the witnesses. As against the above, the defendants led cogent evidence that the 1st defendant was the Assistant Secretary/Pointer to the Oriokpa Plot Allotment Committee when the committee was formed in 1970. The evidence of the 1st defendant

regarding his role as Assistant Secretary and pointer sent by the committee to show the land to the 2nd defendant was not discredited under cross-examination. The court is enjoined to act on such evidence. See **Iyere v B.F.F.M. Ltd** (2008) 18 NWLR (pt. 1119) 300 at 343. Exhibit F is relied on not as estoppel but as a relevant fact to disprove the issue that the 1st defendant was not the Plot Allotment Committee Assistant Secretary/Pointer. See **Agbaran v Akpotor** (1997) 7 NWLR (pt. 514) 499 at 570. Learned counsel submitted that at the time of the allocation of the 1st claimant's late father's farmland, he had died and the claimants who asserts the contrary have no explanation for her collection of compensation for crops from the allottees instead of her father if he was alive and for the role the 1st defendant played in the transaction of payment of compensation to the 1st claimant if he was indeed not a pointer and assistant secretary of the Plot Allotment Committee. He submitted that those applications from the community's file were wrongly rejected in evidence and urged the court to admit them in evidence at this stage of judgment. The court has power to reconsider and admit a document in evidence while writing its judgment if it finds that the earlier rejection of the document was wrongful. See **Buhari v I.N.E.C.** (2008) 19 NWLR (pt. 1120) 246 at 386; paragraph 12 (vi), 23 (ii)(a-e) of the 2nd further amended statement of claim. The said rejected documents are admissible though the CW1 disowned or denied his

signatures on them as that does not affect their admissibility. See **Chevron Nigeria Ltd v Aderigbigbe** (2012) 4 NWLR (pt. 1289) page 14. He maintained that the 1st defendant has no proprietary interest in this suit but was only sued in bad faith, being a witness to the 2nd defendant. He urged the court to strike out the name of the 1st defendant.

In conclusion, Osifo Esq. urged the court to dismiss the claimants' case and grant the counter-claim of the 2nd defendant.

In his written address filed on 13/01/2017, S.O. Obasuyi Esq. of counsel to the claimants adopted the issues formulated in this case as his issues in his written address. Learned counsel submitted on issue 1 that the claimants have proved their case on the balance of probabilities as required under sections 131 and 132 of the Evidence Act 2011. When the parties to a suit are contesting ownership of land, the court has a duty to determine which party has a better title to the land in dispute. See **Idundun v Okumagba** (1976) 9 to 10 S.C. 227.

The procedure for acquisition of land under the Benin Customary Law was laid down by the Supreme Court in the case of **Agbonifo v Aiwerioba** (1988) 1 NWLR (pt. 70) page 325 at 326 ó 327. He submitted that the claimants have satisfied the principles enunciated in the above case by the exhibits tendered and the evidence of the witnesses. The then pointer was late Richard Ebowmonyi. He could not be called as a witness but CW1

(Samson Odiase) the Secretary of the Elders/Plot Allotment Committee at that time also confirmed how the Elders/Plot Allotment Committee sent him and his team to demarcate, inspect and point out the land to the claimant's late father Edokpolor Ogbeide. He maintained that the evidence of CW1 has put beyond doubt how the land in dispute was allocated to the 1st claimant's late father Edokpolor Ogbeide and the evidence of CW1 was not contradicted by the defendants. On the other hand, the defendants have failed to establish by credible evidence before this court how the land in dispute was allocated to the 2nd defendant. They failed to call a single member of the defunct Oriokpa Plot Allotment Committee to testify instead they called the 1st defendant who could not prove that he was a member of the said committee. He submitted that reading paragraphs 8(i),(ii),(iv) and (v) of the 2nd further amended joint statement of defence, the 2nd defendant never validly acquired the land in dispute from the Oriokpa community. While adopting his written statement on oath as his evidence in this case, CW1 was presented with the 2nd defendant's Oba's approval (exhibit H) by the claimant's counsel to confirm if it was prepared by him as secretary and signed by his Plot Allotment Committee he answered in the negative. This response by CW1 puts paid to exhibit H. On the other hand CW1 confirmed the 1st claimant's father's Oba's approval exhibit A. The 1st defendant played no role in the making of exhibit H because he was not a member of

the defunct Plot Allotment Committee of Oriokpa. He was also not a signatory to exhibit H and so cannot attest to the contents of that document also he is not a credible witness. See **Osemwingie v Akagbonghae & Ors** (2008) 6 EDO/HCLR 274 and Section 83(i) and 83(4) of the Evidence Act 2011. Learned counsel submitted that the 1st defendant is not privy to the dealings of that committee and so cannot testify in that regard. He urged the court to discountenance all his evidence in this proceeding. Also the court should hold that the evidence of (CW1) is most probable in this case. He submitted that what transpired between the 1st and 2nd defendants was a private affair that had nothing to do with Oriokpa Community. So it follows that the basic prerequisites required under Benin Native Law and Custom for the acquisition of land as enumerated above dealing with inspection, demarcation and others were not complied with by the defendants. The evidence of CW1 the ward secretary is vital to resolving issue 1 (one). The 2nd defendant did not in any manner whatsoever prove the signatures in his document i.e. exhibit H. No attempt was made to prove the signature of the Ward Secretary (CW1) who has been the only Secretary of that committee since its formation until its dissolution in 1978. According to him, exhibit H is a worthless document as establishing the 2nd defendant's title and was bundled in without being proved. Its probative value is zero. See **Agbonifo v Aiwerioba** (supra) page 251 at 252. The failure of the 2nd defendant to

prove title documents i.e. exhibit H is fatal to their case and leaves the court with no alternative than to hold that the claimants proved their title to the land in dispute since the claimants proved their title to the land in dispute with the evidence of CW1. Where two parties claim to be in possession of land in dispute, the law ascribes possession thereof to the one who can show a better title to the land. See **Amakor v Obiefuna** (1974) 1 ANLR, page 109. He submitted further that the mere production of document of title does not mean that the 2nd defendant has a good or prior title. He must go further to establish his title with cogent evidence and prove the signatures in the Obaø approval which he failed to do. See **Arase v Arase** (1981) 12 N.S.C.C. page 101 at 112 to 113. He maintained that the defendantsø case supports the claimantsø case and they are entitled to rely on it. See **Amukam v Amukam** (2008) 5 NWLR (pt. 1081) page 455.

Obasuyi Esq. submitted that no weight should be attached to exhibit H having regard to Sections 89(c) and 86 of the Evidence Act 2011; the cases of **Gbafe v Gbafe** (1996) 39 LRCN 1122; **Alameyesiegha v F.R.N.** (2006) 16 NWLR (pt. 1004) page 102. Exhibit H is a product of a private affair between the 1st and 2nd defendants. See paragraphs 4 and 5 of 2nd defendantø written deposition and paragraph 8(iii) of the 2nd further amended joint statement of defence. Learned counsel submitted that there cannot be any contradictions with documents that are not in the proceedings

as the documents being referred to by the defendants were not admitted in evidence. He urged the court to expunge exhibit L as it was wrongly admitted. Exhibit B was tendered as a receipt of purchase and not a document of title and so there was no need reading its contents. See Section 102 of the Evidence Act 2011 and the cases of **Alameyesiegha v F.R.N.** (supra); **Nwaogu v Atuma** (2013) 221 LRCN (pt. 2) page 22 to 23; **Olateru v Sanni** (2009) 11 W.R.N. 195. The contradictions are not material and though exhibits I and M were tendered no surveyor was called to give evidence, it was the 2nd defendant that tendered the documents and as such he urged the court not to attach any weight or probative value to them. See **Salu v Egeibon** (1994) 6 NWLR (pt. 348) page 44. Furthermore, the identity of the land is not in dispute. The contradictions are not material enough to affect the credibility of the claimants' case. See **Odulami (NN/2121) v Nigeria Navy** (2013) 5 - 7 (pt. iv) M.J.S.C. page 172 at 173. He urged the court to expunge exhibit J1 relying on Section 102 (b) of the Evidence Act 2011 and the case of **F.R.N. v Usman** (2012) 208 LRCN 56. He submitted that the defendants could not establish the allegation of fraud as required by Section 139 of the Evidence Act 2011. Learned counsel submitted that the operative date is the date of approval by the Oba of Benin and not the date the application was made. Minor irregularities cannot vitiate the validity or authenticity of exhibit A. See **Uhunmwangho v**

Okojie (1982) 1 All N.L.R., page 276 at 292. The claimants have been in possession of the land in dispute and this evidence has not been contradicted by the defendants. See Section 83 of the Evidence Act 2011 and the case of **Ezemba v Ibeneme** (2004) 14 NWLR (pt. 894), page 689. He urged the court to resolve this issue in favour of the claimants.

Learned counsel submitted on issue 2 that the 1st defendant was never the land pointer in the defunct Oriokpa Plot Allotment Committee. He was also not the Assistant Secretary as he pleaded in paragraphs 5, 6, 7 and 8 of his witness deposition. Careful deductions from these statements means only members of the Plot Allotment Committee were signatories because they were members of the committee. That he was not signing means he was not a member. Exhibits A and H were not signed by the 1st defendant. CW1 who was the Secretary of the Ward Committee denied that the 1st defendant was his assistant or Ward pointer as 1st defendant is from Ugiokhuen not Oriokpa. The defendants failed to call any evidence to prove 1st defendant's membership of the committee. The 1st defendant was not a land pointer in Oriokpa but in Ugiokhuen. See witness statement on oath of present 1st defendant in Suit No. B/271/2013. He submitted that from the evidence and the statement on oath the 1st defendant is not a witness of truth. There is no linking him with the Oriokpa Plot Allotment Committee. The 1st defendant did not have the authority (Power of Attorney) to testify on behalf

of the community and so cannot tender exhibit F. He urged the court not to attach any probative value to exhibit F.

Obasuyi Esq. submitted on issue 3 that the general rule is that under Benin Customary Law, the Oba of Benin is the trustee of all land in Benin. The Odionwere and Enogie represent the Oba of Benin in the villages in allocation of land in the dukedoms and villages. He submitted that the defendants did not lead any evidence throughout this proceedings that the 1st defendant had the authority of the Odionwere of Oriokpa or the Oriokpa Committee for Plot Allotment set up by the Oba of Benin to perform all those duties of pointer, demarcation and putting beacon numbers on the land in dispute in his witness deposition on behalf of the committee. The Secretary (CW1) had denied that his committee ever sent 1st defendant to do any of those functions or even that he was a member of the committee. The 1st defendant does not have the power to allocate land in Oriokpa without the permission of the Odionwere and Elders. See **Agbonifo v Aiwerioba** (supra).

Learned counsel submitted that once there is trespass, an action in damages lies even where no actual damages is done to the land. In awarding general damages, this Honourable Court has discretion to make its own assessment as to damages due to the claimants based on the evidence

adduced by the claimants. See **Aminu v Ogunyebi** (2004) 10 N.W.L.R. (pt. 882), page 457 at 484.

In conclusion, Obasuyi Esq. adopted his legal submissions/arguments above in response to the counter-claim of the defendants. From the totality of evidence before this court, the defendants are not entitled to the reliefs counter-claimed in this case. He urged this Honourable court to dismiss the counter-claim of the defendants as lacking in merit. See **Anyanwu v Ozowuka** (2009) 13 NWLR (pt. 1159), page 445 at 476. He urged the court to grant all the reliefs of the claimants as they have proved their case on the preponderance of evidence thereby entitling them to the reliefs sought.

On 3rd of February, 2017, learned counsel for the defendants filed a reply on point of law in reaction to the claimants' written address. He urged the court to disregard the whole submissions of the claimants' counsel, dismiss the claimants' case and grant the 2nd defendant's counter-claim.

I have read the evidence adduced by both parties. The narrow issue for determination, is simply of both claimants and counter-claimant who has proved a better title. The learned counsel for both parties in their addresses properly and correctly articulated the principles guiding land acquisition in Benin land tenure system and land law generally. In this case, I find that the root of title of both parties i.e. the Oba's approval for the claimant exhibit A and that of the 2nd defendant/counter claimant exhibit H can both not be

linked to the land in dispute. It is pertinent to observe that the land in dispute is well known to both parties and by the litigation plans exhibits E and M of both parties are one and the same. The beacon numbers in both Oba's approval have not been linked or bearing to the land in dispute. When placed on the imaginary scale the equities are equal as to whether each party was allotted the land in dispute. I have accordingly decided to jettison the Oba's approval provided by both parties as they cannot creditably prove title to the land in dispute.

I have therefore decided to examine closely the evidence adduced by both parties in support of their claim to possession to determine their claim and counter claim for trespass. Firstly, the claim of the 1st claimant that she was given the share of her father's property which is four plots out of her father's farmland of 38 plots is not borne out of any proof. What I understand from the assertion is that the 1st claimant is claiming that her father had only one farmland in Oriokpa and it is the land in dispute. The claimant's sister CW3, Mrs. Rose Ogbeide Osaze also takes this position. In her statement on oath filed on 9/5/2013, she stated thus:

õ4. That the land in dispute was part of our father's farmland
in Oriokpa community.

7. That after the demise of my father in 1976, the family shared his property on conclusion of his burial rites in accordance with Bini Native Law and Custom.

Under cross examination by Osifo Esq., CW3 stated as follows:

“my elder sister (1st claimant) has the document of sharing.”

From exhibit E the litigation survey plan filed by the claimants shows the land in dispute distinct and distant from the farmland of the 1st claimant's father which is verged brown and described as a smaller farmland of 1st claimant's father co-incidentally measuring 200 feet by 200 feet i.e. 8 plots of 100 feet by 100 feet. CW3 mentions only one farmland owned and left by their father and shared to her sister the 1st claimant. She discloses that her sister the 1st claimant has the document used in sharing their late father's property showing she was given the land. It is noteworthy that this document of sharing was not tendered by the 1st claimant. The Evidence Act 2011 by Section 167(d) states as follows:

“The court may presume the existence of any fact which it deems likely to have happened, regard shall be had to the common course of natural events, human conduct and public and private business, in their relationship to the facts of the particular case, and in particular, the court may presume that ó

(d) evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.ö

Consequently, I find that the 1st claimant in failing to tender the sharing document knows that it will show that the land in dispute is not her father's farmland. There is no credible proof of the existence of two farmlands nor did any of the daughters of Edokpolor Ogbeide state that he had two farmlands in his life time. This in my respectful view is fatal to the claim of the claimants.

On the other hand, the 2nd defendant's counter claim is sustained on concrete acts of possession like the property survey plan of the land in dispute carried out as far back as 12/9/1997 vide exhibit J. In the case of **Basil v Fajebe** (2001) 11 NWLR (pt. 725), page 572 at 616 to 617, it has been held that the act of carrying out property survey is an act of possession. Moreover, the 2nd defendant took steps to get an approved building plan for the land. There is presumed regularity that is, the approving body must have been satisfied that the 2nd defendant has some claim to title. I also find the fact that in 1984, the 2nd defendant paid for the rubber trees on the land vide exhibit H2, a pointer to his possession of the land in dispute.

In all, I am satisfied that the 1st claimant failed to prove her right to possession to succeed in her claim for declaration to title and lawful

possession over the land in dispute and for trespass and injunction. All the claims must fail and they are ordered dismissed.

Conversely, the 2nd defendant by credible acts of possession as found by me, proved his counter claim for trespass and thereby succeeds in that claim for the declaratory order sought in paragraph 21(i) of the counter claim which is granted. I hereby declare that the 2nd defendant is the deemed holder and entitled to the Statutory Right of Occupancy over all that piece or parcel of land measuring 200 feet by 200 feet bounded by Survey Pillars numbers BH765, BH766 BH767 and BH768 lying, being and situate at Oriokpa village Area, Ward 37/B, Benin City particularly shown in property survey plan number OSA/235/BD77 dated 12th September, 1977 and Litigation Survey Plan number ISO/ED/D30/2013.

I find that the 2nd claimant in purchasing the land in dispute from 1st claimant who has no right of title or possession to same not being her father's farmland, trespassed onto the land and thereby is liable jointly and severally with the 1st claimant to pay the sum of ₦250,000.00 (two hundred and fifty thousand naira) as general damages for the acts of trespass complained of.

The claimants whether by themselves, their agents, privies, servants assigns, representatives and anybody connected to the claimants are

restrained perpetually from further entering, trespassing and/or doing anything expressive or indicative of interest in the land.

The claim for special damages though pleaded in paragraph 9(viii) of the defendants statement of defence is not made out and same is dismissed. There is no evidence in terms of receipts to back up the claim.

Hon. Justice E. F. Ikponmwen
Chief Judge
10/3/2017.

Counsel:

S. O. Obasuyi Esq. with C.O. Omo-Igbinowannahia (Miss) for the Claimants.

E. F. Osifo Esq. with O Aitiemwen (Mrs.) for the Defendants.