

THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION, HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, THE HON. JUSTICE E.O. AHAMIOJE,
JUDGE ON THURSDAY THE 19TH DAY OF JANUARY, 2017

BETWEEN:

SUIT NO. B/186/2002

FRIDAY EREGBUWA

CLAIMANT

A N D

1. ESTHER EMOVON }
2. ESTHER OGBEBOR - IYEN }

DEFENDANTS

J U D G M E N T

The Claimant's claim against the Defendant is as formulated in paragraph 23 of the 6th Amended Statement of Claim dated the 5/12/13 and filed on the 6/12/16 which reads as follows:

- i. A Declaration that the Claimant is the person entitled to apply and be granted a statutory right of occupancy in respect of a piece or parcel of land measuring 200ft by 200ft situate lying and being within Elema Quarters, Benin City particularly described in Claimant's predecessor's (Anthony Elema's) property survey plan No. SEA/ED/246/01, bounded by survey beacon Nos. EDE 2677, EDE 2676, EDE 2675, EDE 2674, EDE 2673 and EDE 2672 and surveyed by a registered Surveyor Mr. Henry Edigbonya on the 2nd day of December, 2001 and litigation survey plan dated 25th day of January, 2011.
- ii. Perpetual injunction restraining the Defendants, their agents, servant and privies from committing further acts of trespass to the Claimant's said land.
- iii. An Order on the Defendants jointly and/or

severally to pay to the Claimant N5,000,000.00 (Five Million Naira) special and general damages for trespass to and destruction of things on Claimant's said land, in that sometime 2002, the Defendant illegally, forceably and wrongfully entered into the Claimant's said land and destroyed some economic and edible trees preparatory to building a house.

Pleadings were duly filed and exchanged by the parties. The Defendants set up a Counter-Claim against the Claimant. In proof of the claim, the Claimant called three (3) witnesses and tendered Exhibit "A – F, G1 – G3" respectively. The 1st Defendant testified and called two (2) witnesses. The case of the Claimant can be summarized as follows: CW 3, Mr. Tony Ogbebor Elema is the Claimant's vendor. He adopted his sworn deposition wherein he stated that in December 2001, he sold a parcel of land measuring 200ft by 200ft to the Claimant vide, Exhibit "F". That the land was not square for the measurement of 200ft by 200ft because the moat took part of the land, and the Elema family gave him an adjoining land to compensate for the area the moat took. He said that he surveyed the land, vide Exhibit "D". He said further that one of the Administrators of Elema Estate, Chief Jonathan Elema, his uncle gave him the land, and gave him the general land approval, and not his personal Deed of Transfer. That this was with the knowledge, consent and agreement of the three (3) Administrators – Prince T.K. Elema, Prince S. A. Elema and Prince F. I. Olotu Elema. He stated that Chief Felix Owen Elema, got traditional grant of a vast area of land from the Oba of Benin, Oba Akenzua II. He further averred that the people of Irhirhi Community had earlier challenged the grant of the land by the Oba of Benin to late Chief Felix Owen, and the dispute went to Court between

two of the Administrators of Elema's Estate against the representative of Irhirhi Community/Village. That the dispute went up to the Supreme Court, and the Administrators of the Elema's Estate won, vide Exhibits "C1 and C2". He further said that Elema Estate has boundary with Oko, Irhirhi and Ugiokhuen Communities. That the land in dispute is part of Elema's Estate, and was part of the land adjudicated upon by the Courts in Exhibits "C1 and C2". That the land in dispute is just at the boundary between Irhirhi Community and Elema Estate, but inside Elema Estate.

In answer to questions under cross-examination by Mr. K. O. Longe, he stated that the three Administrators of Elema Estate are now dead. That Prince Jonathan Elema died in 1982. He stated that apart from Exhibit "E", he does not have any other title document to the land in dispute. He denied the suggestion that Exhibit "E" was forged.

The next witness, CW 1 is Mr. Victor Obaseki, a staff of the company owned by the Claimant. He adopted his sworn deposition where he stated that the Claimant has been sick. That he was with the Claimant when he bought the land in dispute from CW 3. His evidence is substantially similar to that of the CW 3 and I do not intend to reproduce same again.

CW 2 is Francis Iyawe, a licensed surveyor. He adopted his sworn depositions wherein he averred that sometime in 2003, the Claimant commissioned him to carry out litigation survey plan for him and gave him the title documents, Exhibits "B1, B2, C1 and C2". That he carried out the survey and produce a certified copy of the plan, Exhibits "B1 and B2". He said that he

discovered an error in the earlier plan and amended same and printed another copy. He said further that the Claimant gave him some litigation survey plans of the Defendant, and he went back to site and super impose the three (3) plans, after which he discovered that the land of the Defendants did not relate to the land of the Claimant. That the land in dispute is within Elema Estate along Igbinosun Street, Elema Quarters, Benin City. He stated that the land in dispute is measuring approximately 200ft by 200ft on paper, but there is a set back caused by the moat and because of the set back, it was not up to 200ft by 200ft. That what the Claimant lost to the moat was compensated by another land measuring 100ft by 100ft adjoining the main land to make it 200ft by 200ft transferred by the Claimant's predecessor to the Claimant. That the Defendant's land is outside Elema's land and not the same land with the land the Claimant is claiming.

In answer to questions under cross-examination by Mr. K. O. Longe, CW 2 stated that he does not know a group called Elema youths who prepared Exhibit "E". That he does not know the signatures of the Administrators of Elema Estate, and would not know if their signatures are on Exhibit "E". He stated that there are three (3) distinct parcels of land in this case i.e., Claimant's land, the 1st Defendant's land and the 2nd Defendant's land. He stated further that the survey plan, Exhibit "B" shows that the land he surveyed is 200ft by 200ft in dimension, but when he got to the land, he found that the 200ft by 200ft on Exhibit "B" included a moat. That he has no document to support his statement about compensation to the Claimant's predecessor. He stated that the set back

(additional piece of land) is not stated in Exhibit "E". He stated that the exact dimension of the land in Exhibit "B" (survey plan) is 200ft by 200ft by 300ft 100ft by 100ft (Exhibit "D", the property survey plan).

At the close of the Claimant's case, the Defendants opened their Defence. The 1st Defendant, Mrs. Esther Emovon adopted her sworn deposition on 16/5/16 wherein she stated that she is the owner in possession of the land in dispute. She gave detailed evidence of Benin Customary Law regarding acquisition of land. She further stated that in 1977, she applied for a piece or parcel of land measuring 100ft by 100ft by an application dated the 13/2/1977 through ward 36A Irhirhi/Ugiokhuen, and same was approved by the Oba of Benin, Oba Akenzua II on the 27/10/1977, vide Exhibit "J". That she was accompanied to the land by one Mr. Omorowa, now late and Mr. Igbinosa, both ward pointers and others. She said that she paid the sum of N500 for the rubber trees on the land to Mrs. Grace Ebohon, vide Exhibit "K". That she immediately took possession of the piece of land and started farming on it, and planted palm trees, and gave permission to other persons to farm on it. She said that she has been in quiet and undisturbed possession of the land without any disturbance until sometime in 2002 when the Claimant started laying adverse claim to the land. That she commissioned a surveyor, DW 1 who produced amended litigation survey plans, Exhibits "G2 and H". She stated that the Claimant damaged her property worth N24, 000.00. She urged the Court to grant her reliefs.

Cross-examined by Mr. Joe Aluyi, she stated that she does not know Chief Felix Owen Elema and his children. That she does not know the boundary

neighbours of Irhirhi Community, and have not heard of any case between them and the Elema Estate.

The 2nd Defendant, Mrs. Esther Ogbebor Iyen adopted her sworn statement wherein she stated that she is the owner of the land in dispute. That the land is in ward 36A Irhirhi/Ugiokhuen village, Benin City. She gave evidence of the Benin Native Law and Custom of acquisition of a parcel of land. She averred that in 1977, she applied for a piece or parcel of land measuring 100ft by 200ft through ward 36A Irhirhi/Ugiokhuen, and same was approved on the 20/10/1977, vide Exhibit "L". That she was accompanied to the land by one Mr. Omorowa who is now late at that time and Mr. Igbinosa (DW 2), both ward Pointers and other persons. She said further that she paid the sum of N1, 000 for the rubber trees on the land to Mrs. Grace Ebohon. That she immediately took possession of the piece of land, and thereafter the husband cut down the rubber trees and started farming on it, and she planted palm trees round the land, and 6 Ogbono trees by the side of the moat. She averred further that she continued farming on the land till 1999 when cows destroyed the crops on the land, and has been in quiet and undisturbed possession. That some time in 2001, she built 3 bedroom (bungalow) flat not roofed, 4 rooms of which two rooms have been roofed, 2 bedroom flats fully roofed on the land. She stated that in 2002, she visited the site only to discover that the foundation she laid for the two flats and the cement blocks had been bulldozed into the bush and on the adjacent parcel of land. That she reported her findings to Mr. Igbinosa and the Elders, and also lodged a report at Ugbor Police Station. That she visited the land again in 2006, and

discovered that there was another building under construction on her land. That she reported the matter to Area Command of the Nigerian Police through a petition. That she commissioned DW 1, who produced litigation survey plan for her, Exhibits "G1 and H". She urged the Court to grant her reliefs.

Cross-examined by Mr. Joe Aluyi, she stated that she has never heard of Chief Felix Elema and the children. That her land is not situate in Elema Estate but in Irhirhi Community. That the son was a minor when she bought the land.

DW 1, James Amadin Osazuwa, is a registered Surveyor. He adopted his sworn deposition wherein he stated that sometime in 2008, the Defendants commissioned him to prepare a litigation survey plan of their individual parcels of land in dispute. That the parcels of land measuring 100ft by 100ft, and 100ft by 200ft respectively are situate at ward 36A Irhirhi/Ugiokhuen village Area, Benin City. He stated that the Defendants showed him their individual title document, i.e. the Oba's approval which was in the maiden name of the 1st Defendant and the name of the 2nd Defendant's son. That he carried the survey of the land and produced a survey plan for each of the Defendant, Exhibits "G1 and G2". He stated that he carried out a comparison of both the Claimant and the Defendants land, and produced a composite plan, Exhibit "G3". That the Defendants showed him the land and the features therein.

Cross-examined by Mr. Joe Aluyi, DW 1 stated that he was given copies of the Claimant's property survey, the survey plan and the composite plan. That he saw a moat and the moat lies behind the parcels of land of the Defendants on the Northern end. He stated that he cannot comment if Irhirhi village and Elema

Estate have a common boundary. That the 2nd Defendant told him that she used the son's name to acquire the land. That he is not aware that Elema Estate and Irhirhi Community litigated the area in dispute, and the boundaries up to the Supreme Court.

The last witness is DW 2, Mr. John Igbinosa. He adopted his sworn testimony where he stated that he was a member of the Plot Allotment Committee in Irhirhi/Ugiokhuen Community ward 36A in 1977, when the Defendants applied for two different parcels of land that share common boundary which measures approximately 100ft by 100ft, and 100ft by 200ft respectively. That upon receipt of the Defendants' Applications, the Plot Allotment Committee sent him as Bush Inspector/Pointer and Mr. Omorowa Iduseri and other persons to ascertain the state of the two parcels of land. He said that they reported back that the parcels of land were free from encumbrance and were without and form of dispute. That the Plot Allotment Committee subsequently endorsed the Applications and forwarded them to the Oba of Benin who approved the Applications.

Cross-examined by Mr. Joe Aluyi, DW 1 stated that he knew that there was land dispute between Mr. Rueben Iserhierhien, Edo Ekuase, Moses Iserhierhien and Elema estate which went to Court. That he would not know if Elema won the case. That in Irhirhi village the Odionwere does not follow the bush pointers to inspect land. That Irhirhi village and Evbo-Elema do not have a common boundary. That the village between the two is Oko village. He said further that

he is not aware that Irhirhi village and Elema had a dispute which went to Court.

At the close of the Defendants' case and in compliance with Rules of Court, the parties file their respective written addresses.

The Defendants' written address was filed on the 6/6/2016. K. O. longe, Esq. of learned Counsel for the Defendants, in his address gave a brief introduction, the summary of the Claimant and the Defendants' evidence and distilled three (3) issues for determination, thus:

1. Whether the parcel of land in dispute are situate within Elema Estate as claimed by the Claimant or the area of authority of Irhirhi/Ugiokhuen Plot Allotment Committee Ward 36A as claimed by the Defendant?
2. Who between the Claimant and the Defendants made a good title to the parcels of land in dispute?
3. Whether Claimant is entitled to injunction or damages?

Arguing issue 1, learned Counsel submitted that on the five ways to prove ownership of land, he cited *IDUNDUN V. OKUMAGBA* (1976) 9 – 10 SC 227. He submitted that the burden of proof that the parcel of land belong to the Claimant rest on him, and relied on the case of *ORLU V. OGOGO – ABITE* (2010) 8 NWLR (PT. 1196) 307. He referred to the Claimant's evidence led through CW 1. That on the location of the Defendants' land, CW 2 said on oath that the land of the Defendants as shown in their survey plans are outside Claimant's land in dispute. He referred to paragraph 6 of the deposition dated 21/10/2013, and the surveyor's evidence under cross-examination. He submitted that the land claimed by the Claimant from the Defendants are not within Elema Estate as

stated by Surveyor Iyawe and that Exhibit "E" their title document was not issued by the Administrators of Elema Estate. He urged the Court to so hold.

On issue 2, learned Counsel submitted that Exhibit "E" shows that the parties who signed are not the Administrators of the Elema Estate. That it is not possible for Jonathan Elema to have signed in 1982 when the document was made in 2001. That in his evidence before Akinbami J. (as she then was) on 19/6/2012, which was perpetuated on 10/12/2013, Tony Elema said during cross-examination that Jonathan Elema died in 1982.

He further submitted that Exhibit "E" shows that those who claimed to be Elema Youths and posed as the Administrators of Elema Estate are impostors and could not have made any valid transfer, and Exhibit "E" is not evidence of title duly authenticated. That a Claimant who relies on documents of title like in this case, must trace his title to a vendor whose title has been established, and cited LAWSON VS. AJIBULU (1997) 516 KLR (PT. 52) 1148.

He argued that the Claimant tendered several judgments in favour of the Administrators of Elema Estate but did not show any link between the Administrators of Elema Estate and himself; and submitted that the failure is fatal to his case, and cited AMODU VS. AMODE (1990) 5 NWLR (PT. 150) 356 AT 367 PARAS. A – B; Section 132 of the Evidence Act, 2011; AND OGBUANYINA VS. OKUDO (NO. 2) (1990) 4 NWLR (PT. 146) 551 AT 572.

He contended that in order to appreciate that those who posed as Elema Youths are impostors he enumerated the names of those who allegedly executed

Exhibit "E" as Prince Jonathan Elema, Prince S.A.O. Elema and Prince F.I.O. Otutu Elema, and that all other documents by the Administrators of Elema Estate tendered by the Claimant referred to the administrators simply as Jonathan Elema, Sunday Elema and Friday Elema, same is the position with the parties who were involved in the suits tendered as Exhibits "C and C1". That the address of the proper Administrators was given as 21, Ogba Road, Benin City, not Evbo Elema, Iyekogba Area Benin, and referred to paragraph 9(A) of the 6th amended Statement of Claim.

He argued that the Defendants testified in line with their pleadings, and that the 1st Defendant tendered Exhibits "J, K, G2 and H". That the 2nd Defendant gave evidence on oath and tendered Exhibits "L, G1 and H".

On compliance with the Benin Customary Law on land acquisition, he referred to CW 2's evidence. He urged the Court to hold that the Claimant did not make a valid title according to Benin Customary Law and dismiss his suit against both Defendants; and that the Defendant proved their case according to Benin Customary Law, and cited OKEAYA (SUPRA) (SIC); AND AGBONIFO V. AIWERIOBA (1988) 1 NWLR (PT. 70) 327 AT 340.

He urged the Court to hold that it was the Defendants who made a good title to the land and that the Claimant's title document was not duly authenticated by the Administrators of Elema Estate, and that the parcel of land is not within Elema Estate.

On issue 3, learned Counsel submitted that the Claimant has not established a case on the preponderance of evidence to entitle him to injunctive

order or damages. That before the Claimant can obtain an injunction or damages against the Defendants, he has to show that he has a legal right which has been violated by the Defendants, and cited YALAJU-AMAYE V. A.R.E.C. LTD. (1990) 4 NWLR (PT. 145) 422 AT 451 – 452; EDOK-ETER MADILLAS V. ALE (1985) 3 NWLR (PT. 11) 43 AT 49; AND BEECHAMS GROUP V. ESDEE FOOD (1985) 3 NWLR (PT. 11) 112 AT 119.

He submitted that it is a fundamental rule that the Court will grant an injunction to support a legal right, and cited ONIAH V. ONYIA (1989) 1 NWLR (PT. 99) 514 RATIO 17. That the Claimant has not led evidence of any legal right that the Defendants have infringed. That since his title document fall short of what is required by law and he has failed to prove title in any of the five ways listed in IDUNDUN V. OKUMAGBA (SUPRA), the Claimant is not entitled to grant of injunction or damages. He urged the Court to dismiss the Claimant's Claim.

On his part, Joe Aluyi, Esq. of learned Counsel for the Claimant filed the Claimant's written address on the 17/6/2016. He gave an introduction, the facts of the case and formulated three (3) issues for determination thus:

- i. Whether the Predecessors of the Defendants, that is, the Plot Allotment Committee of Irhirhi can still lay claim to the land in dispute same having been litigated upon by the Executors of Elema's Estate and the people of Irhirhi from High Court to Supreme Court?
- ii. Whether the Claimant has proved his title to the land to entitle him to the reliefs sought? and
- iii. Whether the Defendants have proved their Counter-Claim?

Arguing issue 1, he submitted that the Claimant pleaded and called witnesses as to give evidence. He gave summary of their evidence and asked whether the land now in dispute forms part of the land covered by the judgments of the High Court, Court of Appeal and Supreme Court? He referred to the four plans i. e. Chief Felix Owen Elema's property plan, Anthony Elema property's plan, Litigation Plan and super imposed plan (composite plan) tendered by Surveyor F. U. Iyawe and his evidence under cross-examination.

He argued that after the Claimant had closed his case, the Defendants brought an application to amend their Statement of Defence and Litigation Survey Plan which was granted by the Court. That the Defendants did not comply with the Court order to file amended plan. He posited that the law is that where he failed to file his amended plan after he obtained the order to do so, he is deemed to have abandoned it. That it was at this very late stage (after the Claimant had closed his case) that the Defendants tendered their litigation survey plan and composite plan which belatedly put the Claimant's land outside Elema's Estate. That the location of the land in dispute then became a strong issue. That though the Defendants had approval from Irhirhi village, Oba's Approval does not indicate the exact location of the land.

He urged the Court not to place value on the composite plan of the Defendants which came into the case after the Claimant had closed his case.

He contended that location of the land in dispute is very vital to determine whether the land is within Irhirhi Community or inside Elema's Estate for the

purpose of *res judicata*, arising from the previous Court Judgments. That the pleading, evidence (Statement on Oath of the Defendants and evidence extracted from them during cross-examination are at variance. He highlighted the variation in the evidence of the 1st, 2nd Defendants and their Surveyor, J. A. Osazuwa. That before the Claimant close his case, the parties were in *ad idem* as to the location of the land, and referred to the Defendants' first litigation plan, the evidence of Igbinosa under cross-examination and submitted that he contradicted the evidence of the Defendants. That Igbinosa was their star witness to prove that they got the land from Irhirhi and Igbinosa and the Odionwere were the Pointers. That the said Igbinosa said he was working in Benin City in 1977 when the Defendants bought their land. That the Defendants pleaded and gave evidence that the Odionwere was with Igbinosa to point the land to the Defendant in 1977. That Igbinosa under cross-examination said that Odionwere does not go to bush to point land to prospective buyers.

On the means of parties, he cited MAYA V. OSHUNITOKUN (2001) FWLR (PT. 81) 1777 AT 1800 RATIOS 8 – 11 AND ODUMOSU V. OLUWOLE (2004) FWLR (PT. 191) 1628 AT 1658 RATIO 15. That applying the principles to the instant case, the Predecessor of the Claimant is Anthony Elema, and the Administrators of the Estate of Chief Owen Elema gave the land to Anthony Elema. That the Administrators are privies to the transaction. That the Defendants got their land from the elders of Irhirhi Community who were some of the Defendants and Appellants in the previous case that went from High Court to the Supreme Court.

That they are privy to the transaction, and the previous suit was fought in a representative capacity for and on behalf of Irhirhi Community.

He posited that Irhirhi Community or elders of Irhirhi Community and the Predecessor-in-title of the Defendants are bound by the decision of the previous suit that travelled from High Court to the Supreme Court. He further posited that the Defendant's pleaded Oba's Approval from Irhirhi Community and referred to the evidence of Mr. F. U. Iyawe.

He argued that John Igbinosa gave evidence for the Defendants in this suit. That he was one of the Defendants in the previous suit and his evidence was that he was a Pointer.

He submitted that they are the same parties and the same land. He referred to the features in both parties litigation survey plans. That the judgment of the Court of Appeal is very relevant to the determination of this case, and referred to pages 10, 11, 12, 15, 16 and 17 of the Court of Appeal judgment.

He argued that the Defendants' Oba's approval was issued to them in 1977, while the Oba approvals of the head Predecessor of the Claimant in respect of the land in dispute was issued to him in 1963 when in fact Irhirhi/Uguikuen Ward 36A Plot Allotment Committee has not come into existence. That at the time Irhiri granted the plots to the Defendants, they had no capacity to do so, in fact the land was not available for grant. That the previous case or judgment has settled this case. He urged the Court to look at the Oba's Approval tendered by the Defendants and that of the head Predecessors tendered by the Claimant's witness.

He submitted that every judgment is a conclusive proof as against the parties and their privies or fact directly in issue in the case directly decided by Court of competent jurisdiction, and cited ODUMOSIN V. OLUWOLE (2004) FWLR (PT. 191) 1628 AT 1652. He posited that there is *res judicata* in this case which will operate against the Defendants, and cited ODUMOSU V. OLUWOLE (SUPRA) AT 1653 RATIO 10. That the Defendants' defence is the issue already settled against them. That they did not refute or join issue with the Claimant on the previous judgment affecting Irhirhi village. That since the Court of Appeal has decided the previous suit against the Predecessors of the Defendants, the Defendants cannot rely on the claim of their Predecessors that they owned the land. That it will be a grave error to allow the Defendants' Predecessors to claim the land and start to re-litigate it as if they won the land. That once an issue has been settled by Court, it cannot be re-opened, and cited ODUMOSU V. OLUWOLE (SUPRA) 1660 RATIO 14. That the Defendants cannot dispute against the Claimant in this proceeding or any subsequent one on matters which have been adjudicated upon previously by Court of competent jurisdiction, and cited MAYA V. OSHUNTOKUN (2001) FLWR (PT. 81) 1777 AT 1798 – 1799 RATIO 14.

He urged the Court to hold that the Defendants are estopped from laying claim of ownership to the land.

Learned Counsel brought out contradiction in the litigation survey plan of the 1st Defendant made in 2015 and the evidence of the 1st Defendant under cross-examination. He posited that the Court should not place value on the

litigation survey plan of the Defendants that came after the Claimant had close his case because it will work irreparable damage, and injustice on the Claimant. That the features in the litigation survey plan are at variance with the pleadings and evidence of the Defendants. That in such a situation, the Court cannot pick and choose, but to hold that the defendants have not been able to defend their case and prove their Counter-Claim with the litigation survey plan.

Arguing issue 2, learned Counsel in his paragraph 10.0 of his address referred to the documents tendered by the Claimant and submitted that the Defendants only attacked the title document of Anthony Elema, and said that the land in dispute is in Irhirhi village.

He further submitted that the Claimant has sufficiently proved that the land is within Elema's Estate and not in Irhirhi village. That the people of Irhirhi village want to tactically re-litigate part of Elema's Estate.

He argued that in Exhibit "E", there is no evidence that Anthony Elema did not validly acquired the land from the Administrators of Elema's Estate. That there is also no evidence that the Administrators of Elema Estate did not give the land now in dispute to Anthony Elema. That the fact that one of the remaining Administrators died in 1982 does not invalidate the transfer done by the remaining Administrators in the name of the three (3) Administrators. That all the Defendants stated at paragraph 2.02 of their final address are facts which ought to be pleaded and issues joined with them. That there was no expert evidence to show that the dimension of land claimed by the Claimant is 100ft by 300ft and not 200ft by 200ft. He referred to surveyor F. U. Iyawe's evidence.

That no Elema family member gave evidence to deny Anthony Elema ownership of the land. That Anthony Elema having proved his ownership of land, the onus is on the Defendants to prove the contrary.

On issue 3, he submitted that the Claimant has proved his title to the land under Benin Custom. That Claimant's head Predecessor's Oba's Approval is first in time, and has proved better title by the tendering of the Court judgment among others.

That in the instant case, the Claimant has discharged the burden placed on him by law. That the onus shifted to the Defendants to disprove same, and they have failed to do so.

He argued that the Defendants pleaded and gave evidence that the duo got traditional grant of their land from Irhirhi Plot Allotment Committee in 1977 at different times. That the 2nd Defendant's name is Mrs. Esther Ogbebor Iyen but the Oba's Approval tendered to prove her title to the land measuring 100ft by 200ft bears the name Ehigiator Victor. That the figure 100ft by 100ft was altered to 100ft by 200ft without initials to show approval of alteration.

He argued further that the 1st Defendant's Oba's approval is dated 13/2/1977 but approved 20/10/1077, and it is for her purported land measuring 100ft by 100ft. That the two Oba's Approvals which came from the same Irhirhi Community approved the same period in 1977 by the Oba of Benin have a lot of discrepancies. That it cannot rightly be said that the two Oba's Approvals came from the same source at the time. That the discrepancies in the two Approvals create serious doubt as to the genuineness of the Ob's Approvals.

That for the 2nd Defendant's pleadings and evidence, the same discrepancies and contradiction occur as that of the 1st Defendant. He stated that the 2nd Defendant said she bought the land for and in the name of her son, Victor Ehigiator, but she could not prove the nexus. That the 1st and 2nd Defendants applied for Oba's Approval on the same date of 13/7/1977, the Oba approved the 1st Defendant's application on the 27/10/77 and approved the 2nd Defendant's application on the 20/10/77 (7 days interval). Yet, lot of contradictions exist in the two approvals.

He contended that the same false presentation was made by Surveyor J. A. Osazuwa for the 1st Defendant. That the Court cannot pick and choose but to disbelieve the evidence of the surveyor and the Defendants. He urged the Court not to attach any value to the litigation survey plan as the contents are at variance with the pleadings and the Statement on Oath of the Defendants. He further contended that the 2nd Defendant star witness, Mr. Igbinosa also contradicted the 2nd Defendant as to how she got her land under Benin Native Law and Custom.

On the whole, he urged the Court to grant the Claimant's reliefs and dismiss the Defendants' Counter-Claim with costs.

He submitted that the Defendants are challenging the name in Exhibit "E" (title document of Anthony Elema). That real names of the Administrators was in issue, and no evidence was adduced to give the real names of the Administrators of the Elema's Estate. That the onus is on the person who assert or who will fail if no evidence is adduce to prove the facts. That if the names in

Exhibit "E" were not correct the Defendants sought to produce and prove the real names, and that the case of LAWSON V. AJIBULU cited by the Defendants' Counsel is not applicable to this case. He posited that it is not true that the Claimant did not link his title to the Administrators of Elema's Estate. That Exhibit "E" is what the Administrators gave to Anthony. That the onus is on the Defendants to prove the contrary. That the Claimant has produced Exhibit "E" as the title document given to his Predecessor by the Administrators of Elema's Estate. That the Defendants have no evidence to rebut it, and the Court cannot go on voyage of discovery on their behalf.

Responding to paragraph 5.06 of the Defendants' address, he contended that the address suggest impersonation which is a criminal offence. That Anthony Elema is an impostor. That the facts in paragraph 5.06 were not pleaded. That in a civil action where crime is imputed, such crime must be proved beyond reasonable doubt.

Replying to paragraphs 5.07, 5.08, 5.09 and 5-10 of the Defendants' address, the Claimant relies on his argument on the inconsistency of the Defendants and their witnesses' evidence. He urged the Court to hold that the Defendants have not properly defended the case, and have not proved their counter-claim.

On the composite plan and the litigation plans of the Defendants, he submitted that the plans did more harm than good to the Defendants. He highlighted areas there were no dispute in paragraph 13.5 of his address, and urged the Court to treat the evidence of surveyor J. A. Osazuwa with disdain.

That the Defendants were mere busy body when they went attacking or bringing out what they perceived as irregular or discrepancy in the title document of Anthony Elema, (the Predecessor of the Claimant), when in fact they have alleged that the land in dispute is in Irhirhi village and not Elema Estate.

He urged the Court to grant the Claimant's reliefs and dismiss the Counter-Claim.

It is pertinent to state that under the Nigerian Land Law, it had long been established that there are five ways of proving or establishing title to land.

These are:

1. Through evidence of traditional history;
2. Through production of document of title which are duly authenticated.
3. By acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference that the person is the true owner;
4. Through acts of long possession and enjoyment of the land, and
5. By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner of the land in dispute.

See: AIGHOBAHI VS. AIFUWA (2006) 136 LRCN 1021 AT 1038.

These five ways of proving title to land were approved by the Supreme Court in the case of IDUNDUN V. OKUMAGBA (1976) 9 – 10 SC. 227.

It is important to point out that the five ways of proving title to land outlined above are quite separate and distinct in their application. In other words, each of the five ways can be relied upon exclusively by a party to support

his claim. This of course means that each of the five ways of proving title will be sufficient proof. It therefore, means that a party claiming title to land is not bound to plead and prove more than one root of title to succeed. Therefore, if a party relies on more than one root or way of proving title, that would be merely to make assurance doubly sure, or he does so *ex-abundati cautela*.

See: MORENIKEJI V. ADEGBOSUN (2003) 8 NWLR (PT. 823)
612 AT 661 – 662.
BALOGUN V. AKNAJI (1988) 1 NWLR (PT. 700) 301.

It is, also pertinent to state, that it is from the Claimant's Statement of Claim that the Court can ascertain the method or methods of proof that the Claimant is relying on in proof of his title to the land in dispute. It is, demonstrably clear from paragraphs 3, 5 and 6 of the 6th Amended Statement of Claim that the Claimant is claiming title to the land in dispute by documents of title.

Now, in the instant case, the Claimant though did not give evidence testified through his vendor, Mr. Anthony Elema, CW 3. He stated that he acquired interest and title in the land measuring 200ft by 200ft from the Administrators of Elema Estate and tendered Exhibit "E" as the title document given to him. That he later transferred the land to the Claimant vide Exhibit "F". The evidence of CW 3 was corroborated by the evidence of CW 1.

On the other hand, the Defendants equally gave evidence of how they acquired the parcels of land from Irhirhi Community and tendered Exhibits "J and L", the Oba's Approvals in respect of their titles to the parcels of land.

It is important to note that the Defendants in paragraphs 3(a) (b) and (c) of the 1st Amended Joint Statement of Defence stoutly challenged the Claimant's title document, Exhibit "E" on the grounds that the document is a sham document executed by impostors; that Jonathan Elema who allegedly signed it died over 15 years before it was executed, and that the document was not signed by any of the known Administrators of Elema Estate.

It is settled law, that in a claim of declaration of title to land, the onus is on the Claimant to satisfy the Court that he is entitled on the evidence adduced by him, to the declaration he seeks. The Claimant must therefore rely on the strength of his case and should not rely on the weakness of the Defendant's case. He must show to the Court, by credible evidence, that he has a better title than the Defendant.

See: FALEYE V. DADA (2016) 15 NWLR (PT. 1534) 81
AT RATIO 4.

AYANWALE V. ODUSAMI (2011) 18 NWLR (PT.
1278) 328 AT 341.

It is, also trite, that production of documents of title though one of the recognized methods of proving title to land, such a document must be of such a character as to be capable of conferring valid title on the party relying on it. It does not mean that once a Claimant produces what he claims to be instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather, production and reliance on

such an instrument inevitably carries with it the need for the Court to inquire into some or all of a number of questions including:

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

See: DABO V. ABDULLAH (2005) 7 NWLR (PT. 923) 181. OYENEYIN V. AKINKUGE (2010) 4 NWLR (PT. 1184) 265, RATIO 2. ROMAINE V. ROMAINE (1992) 4 NWLR (PT. 238) 650. AYAWALE V. ODUSAMI (SUPRA) RATIO 5. KYARI V. ALKALI (2001) 11 NWLR (PT. 724) 412.

I note that learned Counsel for the Defendants in his written address also challenged the signature of Chief Jonathan Elema on Exhibit "E", one of the Administrators of Elema Estate on ground that he died in 1982 and could not have signed Exhibit "E" made in 2001 as pleaded in paragraph 3 (a) – (c) of the 1st Amended Joint Statement of Defence and Counter-Claim.

I have carefully considered the evidence adduced by the Claimant's witnesses both oral and documentary and weighed same side-by-side with the evidence of the Defendants, their witnesses and the Exhibits tendered in line with their pleadings. Let me first deal with Exhibit "E", the root of title of the Claimant.

Suffice to say that I have carefully perused the contents of Exhibit "E".

Admittedly, the said signature of Chief Jonathan Elema is copiously written on the column for signature as No. 1 – Prince Jonathan T. K. Elema. CW 2, Mr. Tony Ogbemor Elema under cross-examination categorically stated that Prince Jonathan Elema died in 1982. And in paragraph 4 of his witness Statement on Oath stated quite clearly that one of the Administrators of Elema Estate Chief Jonathan Elema, my uncle gave me the land. He gave me their general land approval, not his personal Deed of Transfer, with the knowledge, consent and agreement of the three (3) Administrators. However, the other two administrators did not testify in this case.

It is, trite law, that a dead man i.e. Chief Jonathan Elema, who died in 1982 lacked the legal capacity to give, grant or execute a Deed of Transfer, Exhibit "E" in favour of Mr. Tony Ogbemor Elema in 2001, a period of 19 years after his death. It is also settled that Chief Jonathan Elema, a dead man lack the legal capacity to enter into any transaction with CW 3 after his death. Therefore, the testimony of CW 3 that Chief Jonathan Elema gave him the land in 2001 after his death is both a factual and legal impossibility. It is, my view, that CW 3 went from the sublime to the ridiculous when he stated that Chief Jonathan Elema gave him the land in 2001. It is also quite mysterious how Chief Jonathan Elema signed Exhibit "E". I do know that ghost or dead men do not sign document from their grave.

Strange and curious as it may seem, learned Counsel for the Claimant tried to offer explanation as to how the signature of late Chief Jonathan Elema was

signed on Exhibit "E" in 2001 when he submitted at paragraph 10.3 page 18 of his written Address thus:

"Nobody doubt the existence of the Administrators, Anthony Elema explained what was happening after the death of Jonathan Elema in 1982, that there were approval signed down by the three Administrations (sic) Administrators."

With the greatest respect to the learned Counsel for the Claimant, this is not only ridiculous but quite preposterous. How could the Administrators or in fact a dead Administrator i.e. Jonathan Elema sign approval down when the parcels of land have not been allotted or sold to persons or purchasers. This lends credence to the averments in the Defendants' pleading that Exhibit "E" is a sham executed by impostors.

Further, learned Counsel for the Claimant submitted at page 18 of the same written Address that the fact that one of the administrator died in 1982 do not invalidate the transfer done by the remaining Administrators in the names of the (3) Administrators.

With profound respect to the learned Counsel, he appears not to understand the issue at stake. The issue is whether a dead Administrator can validly transfer the land in dispute, vide Exhibit "E" to Mr. Anthony Elema in 2001. At the risk of repetition, Anthony Elema, CW 3 stated unequivocally that it was Chief Jonathan Elema who gave him the land in 2001. It is, my view, that Chief Jonathan Elema who died in 1982 have no legal capacity to give, grant, transfer or execute Exhibit "E" in favour of Anthony Elema in 2001. It is trite that dead person is not subject of legal rights, and therefore cannot give or execute a Deed

of Transfer such as Exhibit "E" in favour of CW 3 after his death. It is, my humble view, that the signing of Exhibit "E" by Chief Jonathan Elema or on his behalf by an unknown person is very suspicious and raise or casts serious doubt about the validity of Exhibit "E". It is my humble view, that notwithstanding the signing of Exhibit "E", by the two Administrators who were also not called to testify in this case, I hold that Exhibit "E" was not validly executed in favour of Mr. Anthony Elema in 2001, and consequently acquired no interest or title to the land in dispute. It therefore automatically follows that since Tony Elema, the Claimant's vendor did not acquire valid title to the land in dispute, he can also not validly transfer same to the Claimant. In other words, Exhibit "E" is incapable of conferring valid title on CW 3. Accordingly, the purported transfer made in favour of the Claimant vide Exhibit "F" is void. This is not the end of the matter.

It is, also important if not significant to note, that Exhibit "E" is boldly captioned "The property of Elema Youths". I note that Exhibit "E" is the title document tendered by the Claimant in proof of his title to the land in dispute. The pertinent questions are: Are the Elema Youths the owners of the property in dispute? Is it the Elema Youths or the Administrators of Elema Youths or the Administrators of Elema Estate that transferred the land in dispute to Mr. Tony Elema? Is it the Elema Youths who purportedly signed Exhibit "E" to transfer the land to Mr. Tony Elema, CW 3? Did the said Elema Youth fraudulently or neglectly or deliberately obtain a copy of the Application signed down by the Administrators of the Elema Estate (as contended by the learned Counsel for the Claimant) and used same to transfer the land to Mr. Tony Elema, CW 3? These

nagging questions, in my view, cast serious doubts on the validity or genuineness of Exhibit "E". It is, my view, that Exhibit "E" which had the bold inscription "property of Elema Youth", and in the absence of any explanation, it is my view that Exhibit "E" was not issued validly by the Administrators of Elema Estate.

Let me turn to deal with issue No. 1 formulated by the Claimant's learned Counsel. The issue is simply whether the land now in dispute forms part of the land covered by the judgments of the High Court, Benin City, Court of Appeal, Exhibit "C2", and Supreme Court, Exhibit "C1"?

It is, pertinent to state, that Claimant and his vendor, CW 3 did not tender in evidence as Exhibits the purported three Oba's Approval of Chief Felix Owen Elema pleaded in paragraph 9 of the 6th Amended Statement of Claim to wit: 5/10/1963, 24/7/64 and 25/6/1962 approved on the 18/2/1965. The Claimant and CW 3 equally did not tender in evidence as Exhibits in this case the survey plans of Chief Owen Elema survey No. OM1690 and OM1692 which were the survey plans tendered in suit No. B/105/83 wherein judgment was delivered on 4/6/1990, which the Claimant relied on. The Claimant did also not tender the Judgment in suit No. B/105/83 delivered by Hon. Justice Joan Aiwerioghene on the 4/6/1990.

Surprisingly, learned Counsel for the Claimant, Mr. Joe Aluyi submitted erroneously that these documents were tendered as Exhibits by a witness, but failed to mention the witness who tendered them. Learned Counsel appearing for the parties in a suit are admonished to always cross-check their records with

the Registrar of Court, whenever they are in doubt about the documents tendered as Exhibits during the course of trial.

However,, it must be noted that on the 19/1/2013, when Mr. Francis Iyawe CW 2, the Surveyor testified for the Claimant, Mr. Joe Aluyi sought to tender the certified true copy of the record of proceedings of the previous testimony of Mr. Anthony Elema from the Bar. Mr. K. O. Longe of learned Counsel for the Defendants objected to the admissibility of same. At that stage, Mr. Joe Aluyi withdrew same and sought an adjournment to enable him come properly through a Motion on Notice which Application was granted. On the 6/12/13, Mr. Joe Aluyi filed a motion seeking amongst other reliefs leave to tender and use the evidence given by the said Mr. Anthony Elema and documents he earlier tendered as Exhibits in the previous proceedings in this case which was granted by this Court on the 12/12/13. Surprisingly, on the 8/5/14, learned Counsel for the Claimant instead of tendering the previous evidence of Anthony Elema and the Exhibits, the said Anthony Elema came to Court to testify as CW 3 wherein he adopted his sworn deposition and tendered Exhibit "E", and Exhibit "D", the survey plan. He failed to tender the title documents of Chief Felix Owen Elema, the survey plans used in suit No. B/ 105/83. Therefore, having not tendered the Oba's Approval of Chief Felix Owen Elema, the survey plans used in suit No. B/105/83, I hold that the Claimant has failed to show any nexus between his documents of title, Exhibit "E" and the said Judgments of the Benin High Court in suit No. 8/105/83, the Court of Appeal, Exhibit "C2" and the Supreme Court, Exhibit "C1".

On the whole, having failed to establish the validity of Exhibit "E", his root of title, and having failed to establish any link or nexus between the various Judgments tendered and Exhibit "E", I hold that Exhibit "E" does not relate to the Judgment in Exhibits "C1 and C2".

Let me turn to the Counter-Claim filed by the Defendants. It is settled law that a Counter-Claim is a cross-action with the Claimant becoming the Defendant to the Counter-Claim. Therefore, the onus of proof of the Counter-Claim rests upon the Counter-Claimant. He must lead evidence in support of the Counter-Claim in order to succeed. See: ANOZIA V. A.G. LAGOS STATE (2010) 15 NWLR (PT. 1216) 207 AT 217; RAPHAEL V. EZI (2015) 12 NWLR (PT. 1472) 39 AND ZENITH BANK PLC. V. VICKDAB & SONS. (NIG.) LTD. (2011) 2 NWLR (PT. 1231) 337.

To prove the Counter-Claim, the Defendants/Counter-Claimants, as earlier stated gave evidence of how they acquired their individual parcel of land under Benin Customary Law through Ward 36A Irhirhi/Ugiokhuan Community which said piece of land was approved by the Oba of Benin, Oba Akenzua II vide Exhibits "J & L". They also tendered their survey plans and composite plan, Exhibits "G1, G2 and H". Their evidence was corroborated by DW 1, the Bush Inspector/Pointer.

The Claimant resisted the Counter-Claim of the Defendants. He testified through CW 1, CW 2 and CW 3. I have earlier reproduced their evidence which needs no repetition.

It is, settled law, that for anyone to acquire valid title or claim of ownership of a parcel of land under Benin Customary Law, such a person must trace his root

of title to the Oba of Benin. See: ATITI GOLD V. OSARENREN (1970) 1 ANLR 1323.

It is, settled law, that there is specific procedure for acquisition of valid title under Benin Land Tenure System.

It is a basic principle that all land in Benin is owned by the Community, for whom the Oba of Benin hold same in trust, and it is the Oba who can transfer to an individual, ownership of such land and until so transferred, the occupier may continue to hold it for farming purposes. See the following cases:

- (i) IDEHEN V. OLAYI (1991) 5 NWLR (PT. 191) 344 AT 347, RATIO 8.
- (ii) ATITI GOLD V. OSARENREN (1970) 1 ALL NLR 125.
- (iii) AIGBE V. EDOKPOLOR (1971) 2 SC. 1.

It is worthy of note that the requisite procedure for acquisition of title to land under the Benin Customary Law has been well spelt out by the Supreme Court in the case of ENABULELE V. AGBONLAHOR (1999) 67 LRCN 571 AT 581 RATIO 1 as follows:

“Under Bini Customary Law, title to land is acquired through a grant by the Oba of Benin through a specific procedure:

- (a) A person intending to acquire land must direct an application in writing to that effect through the Plot Allotment Committee responsible for the Ward in which, the land intended to be acquired is situate.
- (b) Upon receipt of the application, the Plot Allotment Committee will delegate some of its members to carry out an inspection of the land and they will in turn report back to the Committee of their inspection, the purpose of inspection being to ascertain the land to be granted with

certainty and also to ascertain if it is free form dispute or has not been previously granted to someone else.

(c) After being satisfied that the desired piece of land in dispute is free, the Committee will endorse the application and forward it to the Oba of Benin.

(d) The Oba of Benin will then grant his approval to the application in writing.”

See also: (i) *ARASE V. ARASE* (1981) 5 SC 22;

(ii) *OKEAYA V. AGUEBOR* (1970) 1 ALL NLR 1 AT 8.

Let me quickly say that after due consideration of the entire evidence that the Defendants meticulously led evidence in compliance with the strict and set down procedure to be followed in acquiring a parcel of land under Benin Customary Law as adumbrated in many decisions of the Supreme Court. The evidence of the defendants with regard to due compliance with the necessary steps precedent to grant of Oba’s Approval, Exhibits “J and L” respectively was amply corroborated by DW 2, the Bush Inspector/Pointer who gave detailed evidence of the role he played in the process of acquisition of the land in dispute by the Defendants.

I have earlier held that the title document of the Claimant, Exhibit “E” was not validly acquired by CW 3 who transferred the land to the Claimant, vide Exhibit “E”. That CW 3 did not acquire valid title vide Exhibit “E”, and therefore cannot transfer any valid interest in the land in dispute to the Claimant, vide Exhibit “E”.

It is important to state that both the Defendants and the Claimant filed a litigation survey plans as well as composite or composite plans through their surveyors.

It is, trite law, that in land cases, it is the Claimant's survey plan that determine the land in dispute and not the Defendant's survey plan where the Defendant has not counter-claimed. See: MOMOH V. UMORU (2011) 15 NWLR (PT. 1270) 217 AT 247, RATIO 11.

Put differently, the land in dispute in any suit is not that shown or claimed by the Defendant in his Statement of Defence and/or in his survey plan unless such a Defendant counter-claims against the Claimant in respect of such land. See: ADONE V. IKEBUDU (2001) 14 NWLR (PT. 733) 385 AT 389, RATIO 2.

In the instant case, the Defendants counter-claimed against the Claimant. The Defendants' surveyor, DW 1 in Exhibits "G1, G2 and H" copiously depicted in all the survey plans that the Defendants parcels of land are outside the parcels of land claimed by the Claimant. In Exhibit "H", the composite plan, the surveyor DW 1 stated in his observations "item 3" that the Claimant's landed property does not situate along Igbinosa Street, and it is not bound by Imasuen Close. That the location of the Claimant's land according to his property survey plan No. SEA/ED/248/01, Exhibit "D" is totally off the 1st and 2nd Defendants landed property. It is not in consonant with the land he is claiming as stated in his litigation survey plan No. ISO/ED/038/2013, Exhibit "A".

In the course of writing the Judgment, I observed the conflict in the survey plans and composite plans of the parties tendered as Exhibits and invited learned Counsel to address me on the need to visit the *locus in quo* to clear the conflict. On the 23/11/16, learned Counsel for the parties, in their opinion stated that the visit was not necessary, and therefore I cancelled the proposed visit to the *locus in quo*.

Be that as it may, I have earlier in the course of this judgment held that Exhibit "E" did not confer any valid interest on CW 3, the Claimant's vendor and therefore the transfer executed in Exhibit "F" in favour of the Claimant conferred no valid interest on him. I have also held that there is no nexus between Exhibit "E" and the Judgments tendered, Exhibits "C1 and C2". It is my view, and I so hold that Exhibit "E" does not relate to the land in dispute. I further hold that the Defendants have established that Exhibits "J & L" relate to the land in dispute which is clearly depicted in Exhibits "G1, G2 and H", respectively.

I note that the Defendants claim special and general damages against the Claimant for crops and material destroyed.

It is, my view, that the Defendants did not lead any iota of evidence in proof of the special damages itemized in their pleading and sworn depositions. They did not tender any receipts of purchase of the materials itemized. It is, my view, that they also failed to lead credible evidence of general damages. The 2nd Defendant stated categorically that she could not identify who destroy her palm trees and who bulldozed the foundation she laid for the 2 flats and her cement

blocks. The 1st Defendant did not also state that it was the Claimant who destroyed her property. I hold that the Defendants have failed to prove trespass and malicious damage of their property against the Claimant. Consequently, the item of special and general damages is hereby refused and same is accordingly dismissed.

On the whole, I hold that the Claimant has failed to prove his case on the balance of probability as required by law. Accordingly, I hereby dismiss the Claimant's suit in its entirety as lacking in merit.

Furthermore, I hold that the Defendants/Counter-Claimants have successfully proved their individual counter-claim on preponderance of evidence as required by law. Consequently, I hereby enter judgment in favour of the Defendants/Counter-Claimants in the following terms:

- i. A declaration that the 1st Defendant is the absolute owners of all that piece/parcel of land measuring 30.48 meters by 30.57 meters by 30.48 meters by 30.57 meters delineated in survey plan No. JAO/ED2008/021 dated the 18th day of January, 2008. The 1st Defendant is therefore entitled to statutory right of occupancy.
- ii. A declaration that the 2nd Defendant is the absolute owner of all that piece/parcel of land measuring 100ft by 200ft delineated in survey plan No. JAO/ED/22008/03L dated the 18th day of January, 2008 filed along with the 2nd Defendant's Statement of Defence/Counter-Claim. The 2nd Defendant is therefore entitled to statutory right of occupancy.
- iii. I hereby decree an order of perpetual injunction restraining the claimant by himself, his servants, agents and privies from committing further acts of trespass on the land in dispute.

I award costs of N50, 000 in favour of the Defendants/Counter-Claimants against the Claimant/Defendant.

E. O. AHAMIOJE,
JUDGE.
19/1/2017

COUNSEL:

JOE ALUYI, ESQ. FOR THE CLAIMANT

K. O. LONGE, ESQ. FOR THE DEFENDANT
(with him, J. E. Edosa (Miss))