

IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION, HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, THE HON. JUSTICE E.O. AHAMIOJE,
JUDGE ON TUESDAY THE 31ST DAY OF JANUARY, 2017

BETWEEN:

SUIT NO. B/486/2012

**THE INCORPORATED TRUSTEES OF
LADIES OF ST. MULUMBA NIGERIA**

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.....

CLAIMANT

A N D

MR. EDENO EKHATOR

.....

DEFENDANT

J U D G M E N T

By a writ of summons dated the 2/8/2012, the Claimants instituted this suit against the Defendant which was accompanied by a Statement of Claim.

Consequent upon the introduction of the New High Court of Edo State (Civil Procedure) Rules 2012, the Claimants duly frontloaded the witnesses depositions on oath, list and copies of documents to be relied upon at the trial in compliance with the extant Rules of Court.

And by paragraph 18 of the Amended Statement of Claim dated and filed on the 3/7/2013, the Claimants claimed against the Defendant thus:

- i. A declaration that by virtue of a Certificate of Occupancy number EDSR 12833 date 15/10/97 granted by the Government of Edo State and registered as No. 24 at Page 24 in Volume B. 184 of the Lands Registry Benin City the Claimant is seized of and conferred with the statutory right of occupancy in and over the piece or parcel of land situate and known as Ward 40/B Aduwawa Area, Benin City in the Oredo Local Government Area of Edo state measuring approximately 8235.285 square metres more particularly marked and delineated on Survey Plan No.

MWC/19/94 attached to the aforesaid Certificate of Occupancy.

- ii. A Declaration that the Claimant's St. Mulumba Girls Secondary School Aduwawa, Benin City is on the Claimant's piece or parcel of land situate and known as Ward 40/B Aduwawa Area, Benin City in the Oredo Local Government Area of Edo State measuring approximately 8235.285 square metres and covered by a Certificate of Occupancy number EDSR 12833 dated 15/10/97 granted by the Government of Edo State and registered as No. 24 at Page 24 in Volume B.184 of the Lands Registry, Benin City.
- iii. An Order of perpetual injunction restraining the Defendant whether by himself, agents, servants, privies or howsoever from entering, laying claims to or disturbing the ownership rights, possession and peaceable enjoyment by the Claimant of the Claimant's piece or parcel of land situate and known as Ward 40/B Aduwawa Area, Benin City in the Oredo Local Government Area of Edo State measuring approximately 8235.285 square metres covered by Certificate of Occupancy number EDSR 12833 dated 15/10/97 granted by the Edo State Government and registered as No. 24 at Page 24 in Volume B. 184 of the Lands Registry, Benin City.

In proof of its claim, the Claimant called two witnesses and tendered Exhibits "A – E" respectively, whilst the Defendant testified, called two witnesses and tendered Exhibits "F – M" respectively.

The case presented by the Claimants can be summarized in a nutshell as follows: CW 1, Mrs. Vera Okonofua, is the 1st National Vice President of the Claimant, adopted her sworn deposition on the 15/5/2013. She stated that the Claimant, Ladies of Saint Mulumba Nigeria is a Catholic Church Women Organization in Nigeria which is engaged in the promotion of common good, charitable and educational services for the well-being of mankind, and it is registered. That the Claimant has at least one Sub-Council in each of the

Catholic Diocese in Nigeria including Benin Sub-Council. She further averred that the subject of this suit is a parcel of land at Ward 40/B Aduwawa Area, Benin City in Oredo Local Government Area of Edo State containing an area of approximately 8235.285 square metres better described on survey plan No. MWC/19/94 attached to a Certificate of Occupancy, Exhibit "A" granted to the Claimant. That the parcel of land originally form part of the land of the Benin Kingdom vested in the Oba of Benin, Oba Erediauwa. That the Oba of Benin acting through his Secretary, by a letter dated 26/8/94, Exhibit "B" donated the land to the Claimant; and the Claimant accepted the donation of the Oba of Benin, and expressed its gratitude vide a letter dated the 26/10/94. She said that the Claimant subsequently applied to the Edo State Government for a Certificate of Occupancy which was duly granted on the 15/10/1997, vide Exhibit "A". She stated that the Claimant in pursuance of its objective of educational development built and established a Girls Secondary School, called "St. Mulumba Girls Secondary School, Aduwawa, Benin City" on the land, and also obtained the approval of Edo State Ministry of Education to operate same on the land. She further stated that the Claimant has been in undisturbed and quiet possession of the land since 1994, and has been openly operating the school on the land in dispute to the knowledge of the general public, including the Defendant. That recently, the Defendant started to make false claim of ownership of the land. She stated in her additional sworn deposition that the parcel of land claimed by the Defendant is different from the Claimant's land. That Mrs. F. I. Ofoegbu is not one of the

Trustees of the Claimant, and she was not authorized as either its agent or privy for the Defendant's alleged trespass on the Claimant's land. That Mrs. Ofoegbu is not the owner of St. Mulumba Girls Secondary School. She said further that the Claimant was not a party to suit No. B/6/07 which the Defendant obtained judgment against Mrs. F. I. Ofoegbu; and the Judgment obtained is not in respect of the Claimant's parcel of land situate in Aduwawa Area, Benin City. She finally urged the Court to grant the Claimant's reliefs.

In answer to questions under cross-examination by Mr. O. I. Asenoguan, CW 1 stated that the Claimant did not negotiate for the acquisition of the land, but the Oba of Benin gave same to the Claimant as a gift, vide Exhibit "B". That the Oba of Benin mandated somebody who took them to the land. That a survey plan was attached to Exhibit "B". She said that the survey plan attached to the Certificate of Occupancy Exhibit "A" is the same attached to Exhibit "B", but the survey plan was made in the Claimant's name. That after the Oba of Benin gave the Claimant the land, he sent somebody to show them the land, and they surveyed same. That the land the Oba gave to the Claimant is situate at Aduwawa. She stated that she does not live in Benin City and does not know Iwogban. She said that she is unaware that Prof. Ofoegbu built the Claimant's school. That the Defendant challenged the Claimant when they wanted to lay the foundation of the school. She said that she was not aware that Prof. Ofoegbu and the Defendant went to the Oba of Benin over the ownership of the land in dispute. That she was aware that the Defendant got judgment against Prof. (Mrs.) Ofoegbu but not in respect of the land in dispute.

The next witness is Sur. (Nze) Ikem A. Onochie. He adopted his sworn deposition on the 19/9/13 wherein he stated that the Claimant engaged his professional service through its Attorney in June 2013 to carry out a land in dispute survey in respect of the Claimant's landed property located at Ward 40/B Aduwawa Area, Benin City in Oredo Local Government Area. He stated that the Claimant provided him some documents to prepare the survey plan which includes a letter from Oba of Benin Exhibit "B" which contained survey plan No. MWC/6/94, Certificate of Occupancy, Exhibit "A" containing the survey plan No. MWC/19/94 that relate to the same land as survey plan No. MWC/6/94. He further stated that survey plan No. MWC/6/94 and survey plan No. MWC/19/94 relate to the same land; and survey plan No. MWC/19/94 is extracted from survey plan No. MWC/6/94. He said further stated that he was taken to the landed property and shown the boundaries and other features by the Claimant's representative in company of his survey team. Thereafter, they carried out the survey of the site including detailing of physical development and other features on the land. That he prepared a survey plan in respect of the land in dispute, Exhibit "D". He stated that Exhibit "D" reflects the Claimant's land in terms of location, approximate area and co-ordinates with the survey plan, Exhibit "E" in the Claimant Certificate of Occupancy, Exhibit "A".

At the close of the Claimant's case, the Defendant opened his defence. He adopted his sworn deposition wherein he averred that he is the owner of the piece or parcel of land measuring 500ft by 1000ft lying and situate at Ward 40/B,

Uteh Village Area, Benin City, Ikpoba-Okha Local Government Area, Edo state.

He said that the land is not the same as that described by the Claimant in paragraph 4 of the Statement of Claim and survey plan, Exhibit "E" attached to the Certificate of Occupancy, Exhibit "A". He stated that on the 29/9/77, one Mr. J. E. Eddoh of Uteh Central, Benin City, sold a parcel of land to him measuring 500ft by 1000ft which was evidenced by a Deed of Transfer, Exhibit "J". That at the time of the transfer, the said Mr. Eddoh handed to him an original copy of the Oba's approval which got missing. He deposed to an affidavit to that effect, Exhibit "K" and attached a photocopy of the Oba's approval. He said further that he was put in possession by his Predecessor-in-title in the presence of witnesses who have since died. That he exercised acts of ownership by deforesting the parcel of land and planted economic/cash crops; and surveyed the land on 5/5/90, which survey plan is attached to his Certificate of Occupancy, Exhibit "L". He stated that much after he got his Certificate of Occupancy, Exhibit "L", the Oba of Benin, Oba Erediauwa shifted the boundaries of the communities within Ward 40/B to settle inter communal dispute amongst the communities, and consequent upon the adjustment of these boundaries, his land which was in Uteh now fell within Iwogban Land Area. He said that the land in dispute falls completely inside his parcel of land; and his said surveyed parcel of land is demarcated by survey beacons numbers PW 6078, PW 6079 and PW 6081 – 3171 more particularly verged Blue in a litigation property with plan No. ISO/ED/D46/2012 dated the 15/8/12.

He stated that in May 2004, one Mrs. F. I. Ofoegbu, the Claimant's Agent without his consent trespassed onto his land, damaged some of his crops and commenced building of a Secondary School thereon. That he filed suit No. B/6/07 against the said Mrs. F. I. Ofoegbu, and she took him to the palace of the Oba of Benin, and the Oba stated that he cannot give a parcel of land that has already been given out to a third party. That he finally obtained judgment in the suit, vide Exhibit "M". He finally urged the Court to dismiss the Claimants suit.

In answer to questions under cross-examination by Dr. T. C. Osanakpo (SAN), the Defendant stated that there is no survey plan in respect of the Deed of Transfer, Exhibit "J". That the dimension of the land in Exhibit "J" is not the same with that in the Certificate of Occupancy, Exhibit "L". He said that he has no document to the effect that the Oba of Benin altered the boundaries of the two communities. He stated that Exhibit "A" is in respect of a parcel of land in Ward 40/B Aduwawa Area, while Exhibit "L" is in respect of a parcel of land in Ward 40/B, Uteh Village Area.

DW 1, is Francis Useghese Iyawe. He adopted his sworn deposition on the 14/5/14, wherein he stated that he was commissioned by the Defendant to prepare a litigation survey plan and he took him to the land. That as they went round the boundaries of the land, he observed that he had been to the land before when he prepared a litigation plan in suit No. B/6/07. He said that the Defendant showed him his documents of title which included Oba's Approval for a parcel of land measuring 500ft by 1000ft and a Certificate of Occupancy, Exhibit

"L" covering only a part of the entire land (400ft by 450ft). He said that after the inspection, he carried out the litigation survey and produced plan No. ISO/ED/46/2012 dated 15/8/2012. That the entire land of the Defendant in dispute is verged Green. He tendered a survey plan which was admitted as Exhibit "F".

DW 2 is Surveyor Henry Aghedo, a registered Surveyor with the Ministry of Lands and Survey, Benin City, Edo State. He adopted his sworn deposition wherein he stated that the office of the Surveyor General was served with a subpoena, Exhibit "G" in respect of this suit and he was assigned by him to come to Court. He said further that sometime in 2013, the Defendant came to their Ministry with three (3), survey plans registered with the Ministry of Lands and Survey. He further commissioned them to prepare a composite survey of the three plans registered with the Ministry of Lands and Survey. That he was a member of the Team assigned to prepare the composite survey plan and to show where the Claimant's building is situate in any of the plans given to them. He said that they were given survey plans No. LAY/BD/163/90 dated the 5/5/90; survey plans No. MWC/06/94 and MWC/19/94, Exhibit "E". He said that they were also taken to the area where the parcels of land are situate. That upon their visit to the parcels of land as represented in the survey plans, they discovered the followings:

- (a) That the two (2) parcels of land are separate and distinct from each other.
- (b) That survey plan MWC/19/94 is an extraction of survey plan No. MWC/6/94.

- (c) That there is a School known as St. Mulumba Girls Secondary School, owned by the Claimant on one of the parcels of land.
- (d) That the said St. Mulumba Girls Secondary School is on the land described in survey plan No. LAY/BD/163/90, owed by the Defendant.

He said that from their observation, they prepared a composite survey plan Exhibit "H", showing the two parcels of land and where the Claimant's school is situate. That the area verged Green is the landed property of the Defendant covered by plan No. LAY/BD/163/90, while the area verged Blue is the Claimant's land described in survey plan No. MWC/19/94.

In answer to questions under cross-examination by Dr. T. C. Osanakpo (SAN), DW 2 stated that the composite plan, Exhibit "H" was plotted by E. E. Ezekiel, signed by the Surveyor-General, C. U. Iyawe was stated as the Government Surveyor but he did not sign it. He said that himself did not sign Exhibit "H". That he did not state the names of others in the Team. He admitted that he did not state the names of those who discovered the facts stated in paragraph 10, and also did not state the names of those who prepared Exhibit "H". That he was not the person who prepared the plan stated in paragraph 13 (LAY/BD/163/90), and that stated in paragraph 14 MWC/19/94, Exhibit "E". That he did not make or sign Exhibits "A and E".

At the close of Defendant's case, the parties filed their respective written addresses. The Defendant's written was brought in vide a Motion on Notice filed on the 29/9/2016. O. I. Asenoguan, Esq. of learned Counsel for the Defendant in

his written address gave an introduction, facts of the case and distilled a sole issue for determination thus:

“Whether the land on which the school, Ladies of St. Mulumba Girl’s Grammar School is situate belongs to Claimant or Defendant?”

Arguing the issue, learned Counsel submitted that from the pleadings before Court, the oral and documentary evidence adduced on either side, and based on the preponderance of evidence, it is clear that the land on which the Claimant’s school is situate belongs to the Defendant. That it is not in dispute that both Claimant and the Defendant respectively own a parcel of land. He contended that the Claimant’s ownership is traceable to the Oba of Benin who gave a gift of land to the Claimant. He referred to Exhibit “B”. That attached to Exhibit “B” was a survey plan, indicating the particular land given to the Claimant. That the Claimant could only ascertain their land from the original Oba’s survey plan. He referred to CW 1’s evidence. He contended that it is pertinent to note that the Claimant tendered the letter, Exhibit “B” with which the Oba gave them the land, they deliberately and carefully refused to tender the survey plan attached to the letter with which the land given to them was clearly stated or shown. He urged the Court to invoke Section 167 (d) of the Evidence Act, 2011. That the Defendant had it and had to tender it before this Court.

He submitted that CW 2 is an expert witness who should or ought to know that from the nature of this case, what was appropriate for the just and fair determination of the dispute between the parties was a composite survey plan and not a litigation survey plan. That litigation survey plan is necessary when the

land in dispute is not known and or agreed upon by the parties. That it becomes important to file a litigation survey plan when the identity of the disputed land is put in issue by any of the parties, and cited cases of KPEKU & ORS. V.

SIBEKENIKUMU (2013) LPELR 20703; AND OSHO V. APE (1998) SCNJ 139 AT 142 PARAS. C – D.

He posited that from the pleadings and evidence before the Court that the issue in contention is whether where the Claimant had developed their school is within their original land given to them by the Oba or within the Defendant's land as acquired by the Defendant? That it is noteworthy that both parties have a Certificate of Occupancy in respect of their land, and there are survey plans attached to the said certificates. That by the survey plans attached to the Certificates of Occupancy of both parties, the identities of the parcels of land of both parties are clearly described. He further posited that a better description of the land with certainty is by the survey plans attached to the respective Certificates of Occupancy by both parties, and relied on SHUKKA V. ABUBAKAR (2012) 4 NWLR (PT. 1291) 497 AT 528 PARAS. F – G RATIO 3.

He submitted that where a Court is faced with a situation of identifying where the land in dispute is in a case, the situation is resolved by the filing of a composite plan, and cited NWOKAFOR & ORS. V. AGUMODU (2008) LPELR 406. That the failure of the Claimant to file a composite survey plan to establish that the original land given to them is where they built on, and not on the Defendant's land is fatal to their case. He submitted that the burden of proving that where the school is built is within the original land given to the Claimant is on the

Claimant, and the Claimant failed woefully to discharge same. That the Claimant having failed to discharge this burden, their claim must fail and urged the Court to so hold. He referred to Exhibit "H". That it is clear from Exhibit "H" that when the survey plans were super imposed, that the Claimant's land as shown in Exhibit "A" (which is MWC/19/94) is clearly some distance away from where the Claimant had built their school and it is clearly within the Defendant's land as covered by survey plan No. LAY/BD/163/90 as contain in Exhibit "L".

He submitted that the failure of the Claimant to file a composite plan is seriously fatal to its case, and there being no other composite survey plan. He urged the Court to act on the one filed by the Defendant. He further urged the Court to safely rely on same to reach a conclusion. He argued that the Defendant's case is consistent and accord more with probability. That the Defendant had approached the Court against Mrs. F. I. Ofoegbu who was the Senior Officer of the Claimant in Edo State at the material time. That the Court will find that she was the person that signed the letter of gratitude written by the Claimant to the Oba of Benin for the donation of the land. That it is curious that when the Defendant sued the said Mrs. F. I. Ofoegbu in respect of the land on which she was developing the buildings of the school, she did not bring it to the attention of the Claimant. That the Claimant stood by and allowed the case to progress to conclusion and judgment obtained before filing a fresh suit against the Claimant. He referred to CW 1's evidence under cross-examination. That when the Court looks at the judgment, it is clear that efforts made by the Defendant to prevent the building of the school on his land and how he wrote to

the Church to intervene, yet the Claimant now took no steps. He further contented that it is clear that the Claimant cleverly allowed that case to progress to judgment only to bring this fresh case after the Defendant obtained judgment in that case in the guise that the wrong party was sued. That nothing stopped the Claimant from either applying to join that case or to be substituted for Mrs. Ofoegbu. That they did nothing but waited till the end only to commence this new suit. He submitted that it is unimaginable that the Claimant was not aware of the pendency and nature of the claim the Defendant filed against Mrs. Ofoegbu then.

He finally submitted that whereas the Claimants have failed to prove their case on the preponderance of evidence as required by law, the Defendant on the other hand has proved his claim as required by law, and he is entitled to a dismissal of the Claimants' case with substantial and punitive costs against the Claimant.

The Claimant's written address was filed on the 24/10/16. Dr. T. C. Osanakpo (SAN) of learned Senior Counsel for the Claimant gave statement of facts and formulated three issues for determination thus:

1. Whether the Claimant has sufficient interest in respect of the subject matter of this suit?
2. Whether the Claimant has discharged the burden of proof based on preponderance of evidence to be entitled to the title of the subject matter of this suit?
3. Whether the Claimant is entitled to the reliefs sought in this suit?

Arguing issue 1, learned Senior Counsel referred to paragraphs 1, 2 and 3 of the Amended Statement of Claim and submitted that the Defendant in his paragraph 1 of the Statement of Defence dated the 11/3/2013, and filed on 12/3/2013 admitted the facts averred in paragraphs 4.2 (i – iii). That it is settled law that facts admitted need no further proof and the Court is expected to act thereon, and cited ATANDA V. ILIASU (2013) 6 NWLR (PT. 1351) 529 AT 553 PARA. C; and Section 123 of the Evidence Act, 2011.

He submitted that the Certificate of Occupancy averred in paragraph 4 of the Amended Statement of Claim that is the subject matter of this suit evidenced in Exhibit "A" is granted to the Claimant, and highlighted the reasons thereof. He further submitted that having due regard to the Certificate of Occupancy and the attached survey plan, the land in dispute is granted in favour of Ladies of the Mulumba (Nig.) which is the same as the Claimant, and therefore the Claimant has *locus standi* and indeed sufficient interest in the subject matter of this suit, and cited EMEZI V. OSUAGWU & 3 ORS. (2005) 12 NWLR (PT. 939) 340 AT 361 PARAS. C – D. He urged the Court to resolve issue 1 in favour of the Claimant.

In relation to issue 2, learned Senior Counsel referred to Section 131(1) and (2) of the Evidence Act, 2011, and submitted that in civil matters, the onus of proof shifts from the Claimant to the Defendant vice versa. That the onus always rests on the party who would fail if no evidence at all were given on either side, and cited AYORINDE & ORS. V. SOGUNRO & ORS. (2012) LPER 7808 or (2012) 11 NWLR (PT. 1312) 460 AT 482 PARA. C; NDUBUISI V. OLOWOAKE (1997) 1

NWLR (PT. 479) 62 AT 71; AND EZEMBA V. IBENEME (2004) 12 NWLR (PT. 894) (SIC). On the modality of proving title to land, he cited D. O. IDUNDUN & ORS. V. DANIEL OKUMAGBA & ORS. (1976) 9 – 10 S. C. 227 AT 246 – 250; AND THOMPSON & ANOR. V. AREWOLO (2003) LPELR 3240 OR (2003) 7 NWLR (PT. 818) 163 AT 227 PARAS. H – C.

He contended that both the Claimant and the Defendant pleaded and tendered separate Certificates of Occupancy issued by the Edo State Government in their claim of ownership of the subject matter of this suit. He further submitted that a Certificate of Occupancy is only a *prima facie* evidence of title which raises a presumption of title in favour of the person whose name is on the certificate, and cited ATTA V. EZEANAH (2000) 11 NWLR (PT. 678) 363 AT 385. That a Certificate of Occupancy which is not based on a root of title is liable to be set aside, and referred to MADU V. MADU (2008) 6 NWLR (PT. 1083) (SIC) PARAS. B – D. That a party relying on a Certificate of Occupancy must establish that the Certificate of Occupancy was properly obtained and relates to the land in dispute. That where both parties as in this case rely on two distinct Certificate of Occupancy, that the duty of the Court is to determine which of the Certificates of Occupancy that relates to the land in dispute. He referred to CW 1's evidence, Exhibits "A and B", and submitted that Exhibit "B" is the root of title upon which Exhibit "A" is predicated. That an evaluation of Exhibits "A and B" will show an unbroken nexus between both documents and the subject matter of this suit. He argued that the reasonable inference to be drawn from Exhibit "B" is that the

land donated to the Claimant by the Oba of Benin is at Ward 40/B Aduwawa Area Benin City as delineated on survey plan No. MWC/6/94. He referred to CW 2's evidence and Exhibits "A, B, D and E". That the Certificate of Occupancy granted to the Claimant contained in Exhibit "A" and the letter of grant to the Claimant from the Oba of Benin contained in Exhibits "B and E" are in respect of the same parcel of land in identity, size location, name and co-ordinates. That the evidence of CW 2 was corroborated by DW 2 in his oral evidence in-chief.

He further argued that the Claimant is not unmindful of the fact that the Defendant claims to have a Certificate of Occupancy based on a Conveyance from one J. E. Eddoh who had a grant or approval from the Oba of Benin, and referred to Exhibits "L, J and K". That unlike the Claimant's root of title, there is no nexus between the Defendant's Certificate of Occupancy and Exhibits "L, J and K". That unlike the Claimant's root of title, there is no nexus between the Defendant's Certificate of Occupancy in Exhibit "L" and his conveyance from J. E. Eddoh in Exhibit "J" or with the Oba's approval in Exhibit "K", or between the Defendants' title documents and the subject matter of this suit.

He posited that on the face of it, the Certificate of Occupancy in Exhibit "L" was granted to the Defendant in respect of land at Ward 40/B Uteh Village Area, Benin City in Oredo Local Government Area of Edo State of Nigeria containing an area of approximately 1.769 hectare more particularly delineated in survey plan LAY/BD/163/90 attached to the Certificate of Occupancy. That the survey plan made on the 5/5/1990 delineates a parcel of land measuring approximately 1.769 hectares co-ordinates of 261.980.048 MN, 262.161.370 MN, 359.957.227 ME and

359.526.340 ME, and survey beacon numbers PW 6078, PW 6081, PW 6080 and PW 6079, none of which appears or is traceable to Exhibits "K and L".

He argued that in Exhibit "K" the Oba of Benin gave J. E. Eddoh approval for a Plot of land measuring 500ft by 1000ft in Ward 40B Uteh Village, Benin City having beacon numbers 3051 – 3041, 3171 – 3181. That no survey plan was attached to the approval showing the co-ordinates or exact location in Uteh. That thereafter J. E. Eddoh in Exhibit "J" conveyed to the Defendant a parcel of land measuring 500ft by 1000ft in Ward 40B Utteh Village, Benin City having beacon numbers 3051-3041, 3171 – 3181. That in the absence of a survey plan showing the location and co-ordinates of the parcel of land approved for J. E. Eddoh by the Oba of Benin in Exhibit "K" or the land conveyed to the Defendant in Exhibit "J", the exact location of the land in Ward 40B is a matter of speculation which the Court cannot engage in, and cited OVERSEAS CONSTRUCTION CO. (NIG.) LTD. V. CREEK ENTERPRISES (NIG.) LTD. (1985) 3 NWLR (PT. 13) 407.

He further posited that the Defendant's Certificate of Occupancy, Exhibit "L" cannot be said to be derived from Exhibits "J and K". That it cannot also have been said that the parcel of land in Exhibits "J and K" is the same parcel of land in the Defendant's Certificate of Occupancy in Exhibit "L". That there is no nexus between the Defendant's Certificate of Occupancy contained in Exhibit "L" and the Defendant's root of title contained in Exhibits "J and K". He referred to the survey plan No. LAY/BD/163/90 attached to the Defendant's Certificate of Occupancy, Exhibit "L", and submitted that the failure to call L.A. Yakubu to explain how he came by the information contained in the survey plan No.

LAY/BD/163/90 amount to withholding of evidence which casts, serious doubt on the Defendant's case, and cited HABIB BANK (NIG.) LTD. VS. KOYA (1992) 7 NWLR (PT. 251) 43.

He submitted that Defendant chose to call Francis Useghese Iyawe, a private Surveyor and subpoenaed Henry Aghedo, a civil servant with the Ministry of Lands and Survey as DW 1 and DW 2 respectively. That neither DW 1 nor DW 2 prepared survey plan No. LAY/BD/163/90, so are not in a position to link the Defendant's Certificate of Occupancy to the Defendant's conveyance from J. E. Eddoh or to the approval given to J. E. Eddoh by the Oba of Benin. That the evidence of DW 1 and DW 2 did not help the Defendant's claim at all. That before he testified in Court, DW 1 filed a written deposition on the 31/3/2014 in which he stated that after inspection visits, he carried out a litigation survey and produced plan No. ISO/ED/D46/2012 dated 15/8/2012. But when he testified in Court on the 14/5/2014, DW 1 tendered Exhibit "F", a different survey plan dated 4/12/2013 instead of plan No. ISO/ED/D46/2012 dated 15/8/2012 mentioned in his witness deposition. That this is a vital inconsistency in the evidence of DW 1. That the legal consequence of the inconsistency is that the Honourable Court must disregard the evidence of DW 1 as worthless, and cited EKWEOZOR & ORS. V. THE REGISTERED TRUSTEES OF SAVIOURS APOSTOLIC CHURCH OF NIGERIA (2014) LPELR 235 – 72 OR (2014) 16 NWLR (PT. 1434) 433 AT 475 PARAS. B – C.

He contended that there is no oral or written evidence explaining the essence of Exhibit "F" to give Exhibit "F" any efficacy in this matter, and cited CHIME V. EZE (2009) 2 NWLR (PT. 1125) 263 AT 380.

He further contended that DW 2's evidence is inadmissible hearsay. That DW 2 was called by the Defendant to tender composite plan, Exhibit "H" and to give evidence of the contents of Exhibit "H". That DW 2 was not the maker of Exhibit "H". That the composite plan, Exhibit "H" was plotted by E. E. Ezekiel, signed by G. O. Osayande and had provision for counter-sign by C. U. Iyawe who did not counter-sign. He submitted that Exhibit "H" tendered by DW 2 who had no role in making it amounts to inadmissible documentary hearsay which this Honourable Court must disregard, and cited the case of AGBALLAH V. CHIME (2002) 1 NWLR (PT. 1122) 373 AT 460. That the witness deposition of DW 2 based on the inadmissible documentary hearsay of Exhibit "H" is itself hearsay evidence which this Court cannot rely on.

It was submitted that there is no nexus between the Defendant's Certificate of Occupancy and the subject matter of this suit. That the land covered by the Defendant's Certificate of Occupancy is described as Wad 40B Uteh Village in Oredo Local Government Area. That in his Statement of Defence, the Defendant pleaded that his parcel of land is in Ward 40B, Uteh Village Area, Benin City, Ikpoba-Okha Local Government Area. That the Defendant also pleaded that after the issuance of the Certificate of Occupancy, the Oba of Benin shifted the boundaries of the Communities within Ward 40B and the Defendant's land now falls within Iwogban land area. That the reasonable inference is that the Defendant's land is at Iwogban in Ikpoba-Okha Local Government Area which is not the same as Uteh Village in Oredo Local Government Area.

He argued that the Defendant's claim that the Oba of Benin shifted the boundaries of the Communities within Ward 40B was not proved by the Defendant as the Defendant did not furnish any documentary evidence of the boundary adjustment or called witness from the Oba's palace to give evidence of the adjustment.

He further argued that while it is plausible for the Oba of Benin to adjust the boundaries of Communities within his kingdom (though not proved), the Oba of Benin cannot adjust the boundaries of Local Government Areas, as Local Government Areas are creations of statute and the adjustment of their boundaries is a statutory function. That it is implausible that the Oba of Benin adjusted the Defendant's land from Oredo Local Government Area to Ikpoba-Okha Local Government Area. That the Defendant's pleading that the Oba of Benin adjusted the boundaries of the Defendant's land from one local Government Area to another is one more inconsistency in the Defendant's claim. He submitted that the legal consequence of the many inconsistencies in the evidence of the Defendant highlighted above is that when the evidence of the Defendant is placed side by side on an imaginary scale with the consistent evidence of the Claimant, the scale tilts heavily in favour of the Claimant. That on the preponderance of the evidence adduced in this matter, the Claimant has established a better title than the Defendant to the subject matter of this suit. He referred to Exhibit "M", and submitted that the judgment was given against Mrs. F. I. Ofoegbu who happens to be a member of the Claimant. That the

judgment was entered against Mrs. Ofoegbu in her personal capacity and not as a representative of the Claimant. That the judgment in suit No. B/6/2007 tendered as Exhibit is not a judgment against the Claimant. That the judgment does not bind the Claimant and does not create an issue estoppel or any kind of estoppel between the Defendant and the Claimant. That this is so because a person cannot be divested of title in a proceeding in which he was not a party, and cited ALLEN V. ODUBEKO (1997) 5 NWLR (PT. 506) 638 AT 646.

He further submitted that Exhibit "M" is irrelevant in the determination of this suit as it did not divest the Claimant of its title over the subject matter of this suit. He urged the Court to resolve issue 2 in favour of the Claimant.

On issue 3, learned Senior Counsel referred to reliefs I and II and submitted that the Claimant has established these reliefs by virtue of Exhibits "A, B, D and E" and the evidence of CW 1 and CW 2. He urged the Court to grant the reliefs. He further submitted that the reliefs for perpetual injunction flows from reliefs I and II, and cited GOLDMARK NIGERIA LTD. & ORS. V. IBAFON CO. LTD. & ORS. (2012) 10 NWLR (PT. 1308) 291 AT 352 PARAS. B – D; COMMISSIONER OF WORKS, BENUE STATE V. DEVCON LTD. (1988) 3 NWLR (83) 407 AND LSPDC V. BANIRE (1992) 5 NWLR (PT. 243) 620. He submitted that the Claimant is entitled to relief (III). On the whole, he urged the Court to grant the Claimant's reliefs.

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. AKANJI (1988) 1 NWLR (PT. 700) 301.

It is, apt 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 4, 6 and 9 of the Amended Statement of Claim that the Claimant is claiming title to the land in dispute by documents of title through a direct grant from the Oba of Benin, Oba Erediauwa, and a Certificate of Occupancy,

Exhibit "A".

It is important to note that the learned Senior Counsel for the Claimant formulated three (3) issues for determination, whilst learned Counsel for the Defendant formulated a lone issue. It is, my view, that from the issues formulated by learned Counsel for the parties that issue (ii) formulated by learned Senior Counsel for the Claimant, and the lone issue formulated by learned Counsel for the Defendant adequately captured the real issues in controversy between the parties. I, therefore propose to resolve the issues in this case on the aforesaid two (2) issues.

I wish to first deal with the lone or sole issue formulated by learned Counsel for the Defendant which deals with the identity of the land claimed by the Claimant.

It is trite, 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 own case and should not rely on the weakness of the Defendant's case. The

Claimant must show to the Court, by credible evidence, that he has better title than the Defendant. See: FALEYE V. DADA (2016) 15 NWLR (PT. 1534) 80 AT 85.

It is, now firmly established, that the primary duty of a claimant claiming declaration of title to land is to show quite clearly and establish the area and boundaries of the land in dispute, the exact location and size to which his claim relates with such reasonable degree of accuracy and certainty that its identity will no longer be in doubt, as no Court will make declaration of title in respect of an unascertained land. The land must be described in such a way that the Court will be certain and a surveyor will have no problem as to the identity of the land. There is no onus on the Defendant to prove anything unless he files a Counter-Claim.

See: EZEUDU VS. OBIAGWU (1986) 2 NWLR (PT. 21) 208;
OKEKEV. NNOLIM (2015) 5 NWLR (PT. 1453) 444 AT 464;
ADDAH V. UBANDA WAKI (2015) 7 NWLR (PT. 1458) 325.

In other words, the issue of the identity of the land and the proof of same by the Claimant is a very important exercise in a claim of declaration of title to land. Proof of the identity of the land in dispute is a *sine qua non* to establishing a case of title to land. Proof of the identity of disputed land is the first and foremost hurdle the Claimant needs to surmount in the exercise of identifying the location of disputed land. See: ONWUKA V. EDIALA (1989) 1 NWLR (PT. 96) 182 AT 194; ODICHE V. CHIBOGWU (1994) 7 NWLR (PT. 354) 78; SANNI V. OGUNBODE (2001) 8 NWLR (PT. 714) 74; OKEKE V. NNOLIM (SUPRA).

It is, also now well settled law, that where the parties in a claim for title to land are not *ad idem* or *ad idem facit* on the identity of the land in dispute, the party claiming title is duty bound to first and foremost prove the identify of the land with certainty and clarity. *AREMU V. ADETOTO* (2008) 159 LRCN 171 AT 183, *LORDYE V. HIYAMBE* (2000) 82 LRCN 3289 AT 32 97.

It is also trite, that where the land in dispute is not identifiable or ascertainable by one of the parties, a survey plan drawn to scale, accurate, reflecting the boundaries, features of the land and properly orientated is necessary to prove the identity. See: *ARCHIBONG V. ITA* (2004) 117 LRCN 3801.

I shall hasten to state that, in this case, it is undisputed that the Claimant was granted a parcel of land by the Oba of Benin, Oba Erediauwa on the 26/8/94 vide Exhibit "B" with an attached survey plan, Exhibit "E". Indisputably, the Claimant upon the grant of the parcel of land vide Exhibit "B", applied and was granted a Certificate of Occupancy, Exhibit "A" in respect of the land granted in Exhibit "B". Unarguably, the Edo state Government approved a school in favour of the Claimant, vide Exhibit "C".

However, the central or main issue is whether the Claimant has established the identity of the land in dispute? This is because from the pleadings of the parties, the Defendant has put a query as to the identity of the land being claimed by the Claimant. In other words, there is a disagreement as to the location of the land in dispute between the parties as can be gleaned from the pleadings.

Now, the Claimant in paragraphs 4 and 5 of the Amended Statement of Claim, pleaded the location and dimension of the land in dispute, the subject – matter of this suit. On the other hand, the Defendant denied the aforesaid averments in his paragraphs 2, 4 and 5 of his Statement of Defence. The Defendant specifically averred that the said land is not the same as that described by the Claimant in paragraph 4 of the Statement of Claim and survey plan No. MWC/19/94 attached to the Claimant’s Certificate of Occupancy, Exhibit “A”.

At the risk of repetition, it is trite that where both parties by their pleadings and evidence are not *ad-idem* as to the *situs* and size of the land, then the party seeking declaration of title to the land must describe the land with such a degree of accuracy that the identity of the land in dispute will be crystal clear to the Court. See: F.B.N. PLC. V. OKELEWU (2013) 13 NWLR (PT. 1372) 435.

It is trite, that identity of the land can be proved either by oral description of the boundary and features on the land, or a survey plan. See: NWOKOROBIA V. NWOGU (2009) 10 NWLR (PT. 1150) 553.

Now, what is the evidence given by the Claimant in support of its pleading? On the evidence of the identity of the land, the Claimant relied on the evidence adduced by the CW 1 and particularly CW 2, the surveyor.

The CW 1, Mrs. Vera Okonofua testified to the effect that the land in dispute is situate at Ward 40/B Aduwawa Area, Benin City in Oredo Local Government Area of Edo state containing an area of approximately 8235.285

square metres better described on a survey plan No. MWC/19/94 attached to a Certificate of Occupancy, Exhibit "A" granted to the Claimant. That the aforesaid land originally forms part of the land of the Benin Kingdom vested in the Oba of Benin, Oba Erediauwa. The Claimant's Surveyor (Nze) Ikem A. Onochie testified that he was engaged by the Claimant in respect of the Claimant's land situate at Ward 40B Aduwawa Area, Benin City in Oredo Local Government Area of Edo State, and listed the documents given to him to carry out the survey plan. He stated that the survey plan No. MWC/6/94 and survey plan No. MWC/19/94 relates to the same land, and survey plan MWC/19/94 is an extract of survey plan MWC/6/94. He averred that he prepared his survey plan, Exhibit "D" which is the same in terms of location, approximate area, size and co-ordinates with survey plans No. MWC/6/94 and MWC/19/94, and the Claimant's school is within the survey plan, Exhibit "D".

On the other hand, the Defendant called DW 1 and DW 2, his surveyors to testify on his behalf. DW 1, Francis Iyawe also testified that when he went round the boundaries of the Defendant's land, he observed that he had been to the land before when he prepared a litigation survey plan for the Defendant in suit No. B/6/07. He further stated that the Defendant showed him his Oba's Approval for a piece of land of 500ft by 1000ft, and a Certificate of Occupancy Exhibit "L" covering only a part of the entire land (400ft by 450ft). He then produced a litigation survey plan, Exhibit "F". DW 2, is Surveyor Henry Aghedo, a surveyor from the Ministry of Lands and Survey, Edo State who was on subpoena to give

evidence and tender a composite survey plan, Exhibit "H" prepared by the office of Surveyor-General of Edo State. He averred that he was a member of the team assigned to prepare the composite survey plan. He testified that they were given three different survey plans belonging to the parties by the Defendant, and they went to the area in dispute; and from their observation prepared Exhibit "H".

Let me quickly say that I have carefully and painstakingly considered the evidence adduced by the Claimant through its witnesses, and the documentary Exhibits tendered, and weighed same side-by-side with the oral and documentary evidence adduced by the Defendant in line with their pleadings. It is instructive to note that the Claimant in its pleading merely gave a description of the land in dispute as being situated at Ward 40/B Aduwawa Benin City, Oredo Local Government Area of Edo State. It is demonstrably clear that there is no certainty in the scanty description of the land in dispute by the Claimant in its pleading. The boundary men or boundaries of the land in dispute as well as the features were also not stated in the pleading.

The oral evidence adduced by the Claimant's witnesses did not also give a clear description of the land apart from what is stated in the pleading.

In the case of *NWOKOROBIA V. NWOGU (SUPRA)* AT 572, MUKHTAR JSC (as he then was) held as follows:

"It is settled law that litigation is fought on pleadings of the parties, as it forms the foundation from which it is developed and tackled to the stage of judgment. It is the pleadings that form the basis of the plank of a case and the evidence that is adduced in support thereof. Hence, the fulcrum of a case is derived from the pleadings and its success depends thereon."

Unarguable oral evidence of the description of the situation of a land in dispute will serve as sufficient proof of identity and which will dispense with the need to tender a site plan. See: ATANDA V. ILIASU (2013) 6 NWLR (PT. 1351) 529 Ratio 8.

The point being made here is that the Claimant failed to establish the identity of the land in dispute by oral description with sufficient accuracy.

However, I earlier stated that proof of identity of land in dispute can be established either:

- (i) by oral evidence describing with such degree of accuracy the parcel of land in dispute, and/or
- (ii) by filing a survey plan reflecting all the features of the land and showing clearly the boundaries.

The Claimant, in my view, chose the second alternative.

As stated earlier, the Claimant in proof of the identity of the land produced and tendered the survey plan and the property survey plans, Exhibits "D and E" inclusive of plan No. MWC/19/94 attached to the Certificate of Occupancy, Exhibit "A". The Defendant on his part, produced and tendered Exhibits "F and H". It is quite apposite to observe that both the Claimant and the Defendant pleaded and tendered separate Certificate of Occupancies issued by the Edo State Government and the attached property survey plans. The Claimant tendered Exhibit "A", whilst the Defendant tendered Exhibit "L". The aforesaid Certificates of Occupancy and the attached property survey plans were tendered by both the

Claimant and the defendant to show their individual root of title to the land in dispute. The issue now is whether the land covered by survey plan No. MWC/19/94 which is an extract from Plan No. MWC/6/94 Exhibit "E", relate to Exhibit "A", the Certificate of Occupancy of the Claimant, in view of the contention of the Defendant in his evidence and pleading that the land in dispute belong to him. The duty of this Court is to determine which of the Certificate of Occupancy and the attached survey plan relates to the land in dispute.

In the instant case, it is demonstrably clear that the property survey plans attached to the parties' Certificates of Occupancy radically differ as to the location of the land in dispute by their pleadings. In other words, there is a disagreement as to the location of the land in dispute both in the pleadings as well as litigation survey plans produced and tendered as Exhibits by the parties, Exhibits "D and F". Happily enough, the survey plan No. MWC/19/94 (an extraction of Exhibit "E") attached to the Claimant Certificate of Occupancy Exhibit "A"; and the survey plan No. LAY/BD/163/90 attached to the Certificate of Occupancy of the Defendant Exhibit "L", clearly gave description of the identities of the parcels of land of both parties.

It is now well settled that where there are two plans, one filed by the Claimant and another filed by the Defendant and both plans were tendered by the parties, there is need or requirement to file a composite plan as the land in dispute can only be reached by a comparison of the three survey plans. See: NWOKAFOR & ORS. V. AGUMODU (SUPRA) 406. In the case of JOHN BANKOLE

& 3 ORS. V. MOJIDI PELU & 3 ORS. (1991) 8 NWLR (PT. 211) 523 AT 550,

NNAEMEKA AGU JSC held thus:

“I need scarcely comment on who should have filed a composite plan, the Plaintiff or Defendant. It is recognized principle in these land cases that, deriving from the fact that onus of proof is not only on the Plaintiff but also is quite high, as well known stratagem by and weapon for the defence is to cause confusion. When as in this case, upon a view of the cases put by both sides a confusion occurs, it is still the duty of the Plaintiff who has to establish with certainty the identity of the land he claims in order to succeed, to file a composite plan to show the relative positions of the area claimed by either side. This is different from the position in Elias V. Suleiman (1973) 1 ALL NLR (PT. 2) 282 where the Defendant need a composite plan in order to meaningfully set up its own case.”

Furthermore, in the case of NNADI V. OKORO (1998) 1 NWLR (PT. 535) 537

AT 605, the Court of Appeal (Port Harcourt Division) held thus:

“Where as in the instant case, the identity of the disputed land is in issue and the two parties have filed survey plans, and the identity of the land can only be reached by comparison of the survey plans, in order to discharge the burden cast on the Plaintiff, (the Respondent in the instant case) the filing of a composite plan is mandatory. In the instant case, however no composite plan was tendered in evidence in proof of the identity of the land in dispute.”

In the instant case, the onus is squarely on the Claimant to file a composite survey plan, which it failed to do. However, the Defendant whose duty is only to defend the suit and who has no counter-claim before the Court, filed a composite plan, Exhibit “H”. The Defendant also called DW 2, Surveyor Henry Aghedo, a principal surveyor with the Ministry of Lands and Survey, Benin City, in the office of the Surveyor-General to testify in this case. After due consideration of the totality of the evidence of the Claimant and that of the Defendant as well as the

survey plans admitted as Exhibits and particularly Exhibit "H", I say straight away that I believe the evidence of the DW 2 who is a civil servant and an independent witness that the two parcels of land i.e. that of the Claimant and the Defendant are separate and distinct from each other. That the Claimant's claim is the land verged Blue (survey plan MWC/19/94); and the Defendant's land is verged Green (survey plan No. LAY/BD/163/90).

I also believe the candid and compelling evidence of DW 2 that a portion of the land occupied by St. Mulumba Girls Secondary School owned by the Claimant verged Red is on the land owned by the Defendant covered by survey plan No. LAY/BD/163/90 which is the land in dispute. I, therefore hold that plan No. MWC/19/94 attached to the Claimant's Certificate of Occupancy Exhibit "A" does not relate to the land in dispute in view of Exhibit "H", the composite survey plan. I have not the slightest reason to disbelieve the testimony of DW 2 who appear to immeasurably as a truthful witness. I therefore accord his evidence the greatest credence required.

It is, my view, that the Claimant having not filed a composite plan in the first instance, to show the relative positions of the area claimed by either side is fatal to its case. In other words, failure by the Claimant to file a composite plan to show that the original land given to it in survey plan No. MWC/19/94 is where they built their St. Mulumba Girls Secondary School and not on the Defendant's land is detrimental to its case.

It is, also my view, that the Claimant having not also filed a composite survey plan to challenge or counteract that filed by the Defendant is inevitably bound by Exhibit "H", filed by the Defendant.

I hold that the Claimant has failed to show that its survey plan No. MWC/19/94 attached to the Certificate of Occupancy, Exhibit "A" and Exhibit "A" itself corresponds with the area claimed in dispute.

Before I finally put a dot in this judgment, I wish to make few comments on some issues raised by learned Senior Counsel for the Claimant. First, learned Senior Counsel for the Claimant submitted that there is no nexus between the Defendant's Certificate of Occupancy in Exhibit "L" and his Conveyance from J. E. Eddoh in Exhibit "J" or with the Oba's Approval in Exhibit "K", or between the Defendant's title documents and the subject matter of this suit. He submitted further that Exhibits "J and K" do not have any survey plans, valid beacon numbers or co-ordinates with which to identify the parcel of land therein and link the parcel of land to the Defendant's Certificate of Occupancy in Exhibit "L".

With profound respect to learned Senior Counsel for the Claimant, DW 2, Henry Aghedo from the office of the Surveyor-General testified in this case and tendered the composite survey plan Exhibit "H". He gave vivid evidence of which of the party's survey plan relates to the land in dispute. Curious as it may seem, learned Senior Counsel did not cross-examine him as to how he identified the land in dispute without the alleged valid beacon numbers and survey plans and co-ordinates in Exhibits "K and J". These questions ought to have been put

to DW 2 to rebut his evidence and render his testimony unreliable. It is, my view, that failure by learned Senior Counsel to cross-examine DW 2 on these issues, the evidence of DW 2 remains unshakable with regards to Exhibit "H". It is, my view, that the submission piles into insignificance in the face of the unchallenged evidence of DW 2 on the issues raised.

Learned Senior Counsel further submitted that the evidence of DW 2 is inadmissible Hearsay. That Exhibit "H" tendered by DW 2 who had no role in making it amounts to inadmissible documentary hearsay.

With the greatest respect to learned Senior Counsel, this submission appears misplaced. First, learned Senior Counsel was present in Court when Exhibit "H" was tendered and admitted and he raised no objection to its admissibility. Secondly, the submission is not borne out from the evidence of DW 2. In his sworn deposition of 31/3/14, DW 2 copiously stated in paragraph 7 & 11 thus:

- (7) "That I was a member of the team assigned to prepare a composite survey plan and to show where the Claimant's building is situate in any of the plans given to us."
- (11) From our observation, we prepared a composite survey plan showing the two parcels of land and where the Claimant's school is situated."

From the above paragraphs, can the evidence of DW 2 and Exhibit "H" be regarded as inadmissible Hearsay evidence and inadmissible documentary hearsay? The answer is certainly No. Hearsay evidence is defined by Section 37 of the Evidence Act 2011 thus:

"Hearsay means a Statement:

(a) oral or written made otherwise than by a witness in a proceeding.”

In the case of AGBALLA V. CHIME (SURPA) AT P. 460 PARA. E, the Court of Appeal (Enugu Division) held thus:

“Hearsay evidence is that where a witness gives evidence on a fact relying on information by another person. Such evidence has no probative or evidential value not being that of an eye witness.”

See: GABRIEL V. STATE (2010) 6 NWLR (PT. 1190) 280 AT 323 – 324.

In the instant case, DW 2 stated quite clearly that he was a member of the Team assigned to prepare the composite survey plan, and they in fact prepared Exhibit “H”. The fact that DW 2 who was a member of the Team did not personally sign Exhibit “H” cannot render his testimony before this Court inadmissible Hearsay. See: OJO V. GHARORO (1999) 8 NWLR (PT. 615) 374 AT 387.

Lastly, learned Senior Counsel submitted that the land covered by the Defendant’s Certificate of Occupancy is described as Ward 40/B Uteh Village in Oredo Local Government Area. And in the Statement of Defence, the Defendant pleaded Ward 40/B Uteh Village Area Benin City, Ikpoba–Okha Local Government Area; and later pleaded that the Oba of Benin shifted the boundaries of the communities within Ward 40B and the Defendant’s land now fell within Iwogban Land Area.

With profound respect, this submission appears an obvious *non-sequitur* having regard to Exhibits “F and D” tendered by both parties. A cursory perusal

of the survey plans tendered by the parties show similar features particularly names of streets and roads which clearly depict the land of the Defendant as being situate within the same Area with that of the Claimant. The names of the following streets and road are stated in both survey plans of the parties Exhibit “F and D” to wit; Ade Street, Uwa Avenue, ThankGod Street, Oba Erediauwa Street, etc. It is demonstrably clear that the names of the street above appearing in the survey plans of both parties clearly shows that the land of the Defendant is within the same Area where the Claimant’s land is situate, notwithstanding the different names and local Government Areas ascribed to it. And it is trite that the identity of a piece of land in dispute has nothing substantial to do with what the parties call it.

In the case of *NWOKOROBIA V. NWOGU* (Supra) AT 584, the Supreme Court held as follows:

“The ascription of different names by the parties to the same areas of land in dispute, even with alarming degree of imprecision, is often not detrimental to the parties’ case or cases, as the case may be. The emphasis on which an adjudicator always insists is that the parties must be ad idem as to the same areas that are being given different names for various reasons. See; *AROMIRE V. AWOYEMI* (1972) 1 ALL NLR (PT. 1) 101; *MAKANJUOLA V. BALOGUN* (1989) 3NWLR (PT. 108) 192; *SALAMI V. GBODOOLU* (1997) 4 NWLR (PT. 499) 177. *MUAZU V. UNITY BANK PLC.* (2014) 3 NWLR (PT. 1395) 512 AT 537. *FALEYE V. DADA* (2016) 15 NWLR (PT. 1534) 80 AT 103 – 104.”

Let me reiterate the general principle again that in an action for a declaration of title to land, the Claimant has to succeed on the strength of his case and not on the weakness of the Defence. The Defendant has no onus of

proof particularly where he did not counter-claim against the Claimant, as in the instant case. Therefore, a Claimant, as in this case, who fails to prove the exact location and/or identity of the land it claims cannot be said to have proved his title to the land. See: FBN PLC. V. OKELEWU (2013) (PT. 1372) 435.

On the whole, and after due consideration of the entire evidence adduced, I hold that the Claimants have failed woefully to prove their case on the balance of probability as required by law. Accordingly, I hereby dismiss the Claimants' suit in its entirety as lacking in merit. I award costs of N50, 000 in favour of the Defendant against the Claimant.

E. O. AHAMIOJE,
JUDGE.
31/1/17

COUNSEL:

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(with him C.K. Dibia, Esq.)

O. I. ASENOGUAN, ESQ. **FOR THE DEFENDANT**