

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

FRIDAY, 11TH MAY, 2018

SUIT NO. B/37/12

BETWEEN:

Andrew Ugiagbe í í . í . í . í í . í í í Claimant

Vs

Miss Ann Imariagbe Ugiagbe í . í .. í . í í í Defendant

J U D G M E N T

The Claimant filed a statement of claim of 50 paragraphs and a reply of 47 paragraphs, while the Defendant filed her statement of defence and counter claim. The pleading of the Claimant is to say the least, verbosity taken to new heights. Both parties are siblings. Their mother now deceased left some properties and this has given rise to the dispute between them. The case of the Claimant is that the family of the deceased intervened to share the properties of their mother as the Defendant could not render account. The property in dispute in this case was according to the Claimant shared to him but after sharing the Defendant who had the documents of title to all their late mother's properties refused to release them to the beneficiaries. Claimant reported the matter to the "Palace". The "Palace" asked the Defendant to release the documents to him but she refused.

On the other hand, the Defendant claims that in her mother's life time she transferred two properties to her. She maintained that there was a purported sharing of her mother's properties after her burial rites. That No. 1, Ogba Road by Boundary junction, Benin City was purportedly shared to the Claimant. She was not at the meeting. She insists that, that property and another at No. 4, Edebiri Street, Benin City were gifts inter vivos to her by her mother. When the first suit initiated in 2008 by Claimant was pending he reported the matter to the Oba's Palace but she refused to honour the invitation to the Palace. It is common ground that No. 1, Ogba Road, which is in dispute, belongs to their late mother as she inherited it from her own late father. Both parties agree that the property in dispute is being contested because the Claimant believes that the document evidencing the gift inter vivos is forged i.e. exhibit P. The Claimant relies on exhibit C which is the document used in sharing the properties by the family of the deceased and also by exhibit B which is a ruling in a Customary Arbitration. The first issue to be tackled is whether in this case there was a customary arbitration. Exhibit B is a letter in response to an enquiry from a Lawyer asking for a copy of the resolution of a matter decided in the Oba's Palace and instead of sending the copy of the resolution as requested for, it states inter alia:

*"I am directed by the Omo N'Oba N'Edo, Uku Akpolokpolo,
Oba of Benin to refer to your letter dated 15th March, 2011*

requesting for copy of Palace resolution on controversy between Mr. Andrew Ugiagbe and Miss Ann Imariagbe Ugiagbe and to say that after deliberation on the issue by the Omo N'Oba and Chiefs it was found that the claim by Miss Ann Imariagbe Ugiagbe that their late mother bequeathed the house in question to her was untrue because there was no evidence to substantiate her claims. The Omo N'Oba and Chiefs then resolved that Mr. Andrew Ugiagbe being the eldest child to the late woman (Mrs. Mary Osahon Ugiagbe) should take possession of the house ...”

Exhibit B, in my respectful view does not confirm the physical presence and voluntary submission of defendant to the customary arbitration. Defendant in her evidence denied going to the Oba's Palace. Despite all the eloquent submissions of Dr. O. G. Izegbuwa of counsel to the claimant on customary arbitration, this case cannot be determined on customary arbitration. I agree entirely with the defendant's counsel, Mr. R. O. Isenalumhe in his reply on point of law on customary arbitration and reliance on the case of **Alibo v Akusin** (2010) FWLR (pt. 526) p 1059 at 1088 ó 1089 per Ugbuagu, JSC. I cannot improve on the submission. Exhibit B cannot be relied upon to determine this case.

The next issue for my determination is whether exhibit P is credible. Whereas, the Claimant thinks it is fraudulent as the signature therein is not his mother's signature, the Defendant relies on it. The Claimant also relies on the sharing document by the family exhibit C but Defendant says she was not present during the sharing and she was given the property as a gift inter vivos by their mother vide exhibit P.

Dr. Izebuwa of counsel to the Claimant argued that exhibit P being a registrable instrument should not be used in evidence and places reliance on the case of **Atanda v The Hon. Commissioner for Land & Housing, Kwara State** (2017) 42 WRN 48. The above argument was met by Mr. Isenalumhe's submission in his reply on point of law relying on the case of **Egbuchulan & Anor v Egbuchulan** (2014) LPELR 62283, (CA) and **Okoye v Dumez Nig. Ltd.** (1985) LPELR 2556 (SC) per Bello, JSC at page 14 paragraphs B to D.

It is my finding after considering both submissions that exhibit P only goes to prove that there was a transaction between mother and daughter and cannot confer title. A careful perusal of exhibit P is that it purports to transfer title from the transferor to the transferee. This being the case it ought to have been registered under Sections 2 and 16 of the Land Instrument Registration Law Cap 81 Laws of the Defunct Bendel State 1976 now applicable in Edo State. Accordingly exhibit P is not admissible in

evidence. It is expunged and excluded. Exhibit P happens to be the bedrock of the defendant's claim to the property in dispute. In the absence of it, exhibit C becomes relevant. Although the defendant's position is that she was not present, I am satisfied that the document appears credible and I believe the evidence of CW1 who is a legal practitioner and under cross examination said he was present during the sharing of the deceased properties at a family meeting and signed the document.

With this, the matter has been resolved as the defendant in her counter claim did not ask that exhibit C be set aside. I hold that the claimant has proved on the preponderance of evidence his title to the property in dispute as evidenced by exhibit C. The defendant/counter claimant has failed to prove her counter claim on the preponderance of evidence based on the exclusion of exhibit P which she relies on heavily.

Consequently, the counter claim of the defendant is dismissed in its entirety.

In the circumstance, I declare that the Claimant is the person entitled to the Statutory Right of Occupancy to the property in dispute and described and known to both parties as No. 1, Ogba Road by Boundary Road Junction, Benin City. I grant an order of perpetual injunction restraining the defendant, her agents, servants, assigns and or representatives from collecting rents, or selling the house or further acts of trespass on the

property known as No. 1, Ogba Road, by Boundary Road junction, Benin City.

I make no order for rendering accounts as no evidence in support was placed before me.

Hon. Justice E. F. Ikponmwon,
Chief Judge
11/5/2018

Counsel:

Dr. O. G. Izevbuwa í í í í . í . í í í for the Claimant

R. O. Isenalumhe Esq. with Efe Onegbedan Esq í for the Defendant