

**IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY**

MONDAY, 23RD DAY OF OCTOBER, 2017

SUIT NO. B/52/2014

BETWEEN:

MR. AUSTINE AYEMERE OJEMEN í í í í í í í CLAIMANT

AND

MR. JUDE NOSAGIE í í í í í í í í í DEFENDANT

J U D G M E N T

The claimant Austine Ayemere Ojemen by paragraph 31 of the amended statement of claim filed on 8/5/2017 claims as follows:

- (1) A Declaration that the claimant is entitled to the grant of a statutory right of occupancy of a large parcel of land measuring 3.025 hectares situate and lying at Okha village Area between Sapele New Express Way and the old Benin Sapele Road, in Okha village of Ikpoba-Okha Local Government Area of Edo State.
- (2) The sum of ₦500,000.00 (five hundred thousand naira) only being special and general damages in trespass as the Defendant wrongfully broke into and entered the said land in dispute without authorization or consent of the claimant.
- (3) An Order granting continued possession of the said land measuring 3.025 hectares lying and situate at Okha village,

Benin/Sapele Road, Benin City as in plan No. OM4306 dated 30th September, 1974 and Plan No. ZEKKO/0337/2005 to the claimant.

- (4) For an Order of perpetual injunction restraining the Defendant, either by themselves or by their Servants, Privies, Agents, Employees and Assignees however described from entering upon or committing further acts of trespass upon the said land.
- (5) An Order setting aside Certificate of Occupancy No. BDSR 14688 being paraded by the Defendant over the land in dispute.

The Defendant Jude Nosagie, on 6th of May, 2014 filed his statement of defence and counter-claim and by paragraph 24 thereof counter claims against the claimant as follows:

- (a) A declaration that the Defendant is entitled to a Statutory Right of Occupancy over all that parcel of land measuring 2.873 hectares (approximately 300 feet by 1000 feet) lying and situate at Ward 12, Okha 2 village Area, along Benin Sapele Road, Benin City in old Oredo Local Government Area (now part of Ikpoba-Okha Local Government Area), Edo State particularly delineated in Survey Plan No. ISO/ED/87/94.
- (b) General damages in the sum of ₦1,000,000.00 (one million naira) against the claimant.

- (c) Perpetual Injunction restraining the claimant his agents, servants, privies and assigns from further interfering with the Defendant's possession in respect of the said land.

The issues formulated as arising in this case are:

- (1) Whether the defendant has proved his counter claim in respect of that parcel of land measuring 2.873 hectares approximately 300ft by 1,000ft particularly delineated in survey plan No. ISO/ED/87/94.
- (2) Whether there was a valid Customary Arbitration.
- (3) Whether the title of the claimant being earlier in time is not superior to the title of the defendant.
- (4) Whether the claimant is not entitled to the reliefs as claimed.

The claimant opened his case on 20/10/2014 with CW1 Peter Aguanowan Obasuyi adopting his statement on oath filed on 6/2/2014. He states that he was one of the seven male aids who lived with Queen Eson at No. 4, Plymouth Road, Benin City, Edo State and he was the caretaker of all her landed property. He was the person the land in dispute was shown to by Odionwere and Elders of Okha village. The Iye-oba, then Queen Eson instructed him to take surveyor Omoregie to the site so that they can do a perimeter survey which was carried out and he prepared a survey plan registered as OM4306 dated 30th September, 1974. Sometime in 1978 the Iye-oba, then Queen Eson instructed him to go and show Mr. Ojemen the parcel of land which he carried out. Late Justice D.I. Akenzua who was then

a practicing lawyer drafted a conveyance between Queen Eson and Mr. Ojemen. After a long time, Queen Eson asked him to go and show her daughter Princess Gladys Akenzua and Agho the remaining portion of the land which he did. In 2010, some Chiefs from the Oba's Palace asked him to testify on what he knows about the land in dispute between Mr. Ojemen and one Barr. Nosagie. He went with the Chiefs to inspect the site along with the parties. He had never met Jude Nosagie Esq. and so he told the Chiefs that Mr. Agho and Princess Gladys whom he showed the land should have been present and not Nosagie. On a second visit to the land and in the presence of Mr. Agho, he showed the chiefs the portion of the land which Queen Eson transferred to Mr. Ojemen.

Under cross examination by Osaghae Esq. CW1 testified that he is aware that Queen Eson transferred 600ft by 500ft to the claimant from the land at Okha from the old Warri/Sapele Road. He did not sign the deed. It is not correct that Queen Eson sold land measuring 600ft by 1000ft to the defendant.

The claimant Austine Ayemere Ojeme testified on 20/10/2014 by adopting his witness statement on oath filed on 6/2/2014. He states that he is the owner in possession of the land in dispute which he acquired under customary sale in 1978 in the presence of witnesses from Iye-Edaiken the mother of the present Oba of Benin (as at the time of the institution of the suit), from her large parcel of land measuring 600ft by 1000ft situate at Okha village along Benin ó Warri Road. She instructed her pointer one Mr.

Aguanowan CW1 to show him the exact boundaries of the land. The entire of the Iye-oba's land is divided into two separate and distinct parcels of land by NEPA lines as shown in her property survey plan, drawn by a licensed surveyor O.M. Omoregie in plan No. OM4306 dated 30/9/1974. The portion that was conveyed to him measures 600 feet along the old Benin-Sapele Road and 500 feet inwards and it is properly delineated in the survey plan. The said parcel of land was duly approved by Oba Akenzua 11, C.M.G. on 9/12/1977. The claimant took unchallenged possession of the said land and Robison Abadia was appointed his care-taker by the village head. He instructed surveyor E.O. Ezekiel to survey the land and prepare a property survey for him which was carried out. The land in dispute is delineated in PINK as shown in survey plan No. ZEKKO/0337/2005 dated the 11th day of May, 2008 and which said plan is superimposed on the survey plan No. OM4306 dated 30/9/1974 made for his predecessor in title. In 2009 the defendant without recourse unlawfully trespassed upon his land and put a sign board on the part of his land measuring 300 feet by 500 feet. He reported to Prince Edun Akenzua the Enogie of Obazuwa who is a son to the Iye-oba who graciously agreed to resolve the matter between the parties since they both acquired their different parcels of land from his mother. Prince Edun Akenzua invited his brother Enogie Godwin Akenzua, the Enogie of Oko Odighi to assist him. All parties except Agho were present. At the meeting the claimant presented Oba's approval, conveyance, the Iye-oba's Survey Plan and his survey plan while the defendant presented a

conveyance and claimed to have a Certificate of Occupancy. At the end of the meeting the Enigies advised that the defendant's predecessor in title, one Mr. Agho should take the half plot facing the express way since it was their younger sister who sold to him and they did not want him to loose totally while the claimant remains on his land to maintain the peace, but the defendant did not agree with the decision and said he was going court. The claimant not happy with the decision of the defendant to go to court wrote to the Oba of Benin to intervene in the matter. The Oba then constituted a panel headed by Chief Eduwu Ekhaton to look into the matter. Several meetings were held by the panel after which the panel stated that because the 2nd defendant had a Certificate of Occupancy they could not handle the matter and so he decided to go to court.

The claimant tendered exhibits A, B, C and D.

Under cross examination by Osaghae Esq. the claimant testified that he does not know if Queen Eson also sold a parcel of land to one Mr. Agho in Okha area. The parcel of land transferred to him by Queen Eson is 7.474 acres. He is not aware that Agho bought 300 feet by 1000 feet. Agho never produced any document given to him by Queen Eson the Iye-oba. He tendered exhibit E. It is not true that the pointer accepted responsibility for misleading him as to the portion of land acquired from Queen Eson. It is not correct that late Agho had been on the land in dispute since January 1978. It is not correct that the defendant has been on the land since 1994. The land

given to Queen Eson as shown in the Oba's approval is 600 feet by 1000 feet.

CW2 John Aigbe testified on 2/12/2015 by adopting his witness statement on oath filed on 6/11/2014. He stated that he is a registered surveyor and that sometime in 2013, the claimant commissioned him to prepare a litigation survey plan for him. The claimant took him to the land in dispute and showed him his title documents, the boundaries of the land in dispute. The claimant explained to him about the features he saw on the land. The claimant's land trespassed unto by the Defendant is verged red in exhibit F.

Under cross examination by Osaghae Esq. CW2 testified that the claimant told him there was already a pending suit in respect of the land. The claimant did not show him any court document. He prepared exhibit F for suit No. B/56/2013. He visited the land in dispute and there are no plants and tress on the land. He cannot recollect that there is a sign post on the entire land. The high tension electric power transmission is not the boundary of the land. Exhibit F is for this case.

CW3 Christopher Ehikhuemen Olumese testified on 2/12/2015 by adopting his witness statement on oath filed on 6/2/2014. He stated that he was with the claimant at Enogie Edun Akenzua's House and those present at the meeting include Enogie Godwin Akenzua (late), S.E. Ezomo and the defendant. At the meeting, Enogie Edun Akenzua and Godwin Akenzua requested from both parties the documents each of them had in respect of the

land in dispute and he inspected them. Prince Edun Akenzua asked the defendant to take the parcel or plot between the new road and the NEPA power lines while the claimant takes the parcel or plot between the power lines and the old road, being the part transferred by their mother and which agreement was drawn up and executed in presence of late Justice D.I. Akenzua. Both parties accepted the decision reached, however the defendant changed his mind and said he was going to court. Thereafter the claimant wrote a petition to the Oba of Benin, His Royal Majesty Oba Erediauwa who appointed some chiefs headed by Eduwu Ekhator to look into the matter, and decided that it was Peter Aguanowan Obasuyi and not Asia that was the claimant's mother's pointer. The chiefs never considered the evidence before it, but kept hammering on the fact that since the defendant had a Certificate of Occupancy they had nothing to do with it. At this point the claimant informed the panel of chiefs that he would go to court.

At the close of the claimant's case the defendant opened his case on 27/3/2017 with DW1 Miller Chukwunekwu Friday adopting his witness statement on oath filed on 7/5/2014. He states that he knows the land in dispute and the claimant is not and has never been in possession of a large parcel of land measuring approximately 600 feet by 500 feet. He states that it is the Defendant who holds a Statutory Right of Occupancy and in possession of the land in dispute. The original owner of the land in dispute is Queen Eson Akenzua, she acquired the said land by virtue of an Oba's

Approval dated 9/12/1977 and surveyed same. He states that all that parcel of land measuring 300 feet by 1000 feet lying and situate at Ward 12, Okha 2 village area, along Benin Sapele Road, Benin City in old Oredo Local Government Area (now part of Ikpoba Okha Local Government Area), Edo State was sold and duly transferred to the defendant by one Mr. Patrick Theo G. Agho of No. 63, Efosa Street, Uzebu Quarters, Benin City. Mr. Patrick Theo G. Agho transferred the said parcel of land including the part of the land now in dispute to the defendant vide an agreement dated the 18th day of January, 1994. The defendant's predecessor-in-title went further to depose to an affidavit after the sale to assert his ownership and transfer to the defendant. The defendant maintained undisturbed possession of the land since 1994 when he bought the land and erected a sign post there. The defendant's predecessor-in-title acquired same from the original owner Queen Eson Akenzua by virtue of an Agreement dated the 9th day of January 1978. The defendant responded to the invitation regarding a dispute to the land at the instance of the claimant by Enogie Edun Akenzua. The defendant consistently stated that he had a Certificate of Occupancy in respect of his aforescribed piece of land which runs between the old Benin Sapele Road and the New Benin/Sapele Express-way in Okha village. The matter was never resolved between the defendant and the claimant because the defendant's predecessor-in-title did not attend any of the meetings and because of the fact that the defendant had a Certificate of Occupancy in respect of his land, the matter as stated by the Enogie, Prince Edun Akenzua

(Enogie of Obazuwa) and his brother the Enogie of Okodighi was beyond them and the proposal that the parties (claimant and defendant) should share the land equally which is 600 feet by 500 feet each was never agreed upon particularly by the defendant. The defendant outrightly rejected the proposal because he was aware that the claimant was running away from the part of his land that other people had either built on or development was on going at various levels of construction. The claimant was disappointed by the decision of the Enogie to decisively adjudge in his favour, decided to write to the Oba of Benin. That the Oba of Benin, Oba Erediauwa appointed a committee headed by Chief Eduwu Ekhaton (J.P.), the Obasogie of Benin kingdom to look into the matter and report their findings to him. The committee held meetings with parties, their witnesses and other persons who one way or the other was connected to the land, then on completion of their task, reported their findings to the Oba of Benin. That the Oba of Benin resolved the dispute by stating that since Mr. Ojemen (claimant) land is equal to Barr. Jude Ezemwenghie Nosagie's land 300 feet by 1000 feet and the latter had obtained a Certificate of Occupancy (C of O) for his own in 2004. Mr. Ojemen should take the other 300 feet by 1000 feet i.e. from the New Road to the Old Road. The award/decision of the committee and copies of some were to be sent to parties on request, which the defendant did by a letter dated 21/08/2012.

DW1 tendered exhibits G, G1, G2, G3, H and H1.

Under cross examination by Chief Ihensekhien DW1 testified that he knows the land in dispute. The land is 300 feet by 1000 feet. He was not present when the land was purchased. Before now there were some cashew trees on the land but right now the boundary between the land and a neighbour's land is a wall fence within the land with palm trees. On the other side the land is bounded by Bazuaye's land before he sold it.

At the close of evidence both learned counsel adopted their written addresses on 18/9/2017. In his written address, filed on 13/6/2017 learned counsel for the defendant E.O. Osaghae Esq. adopted the issues formulated as his issues.

On issue 1 learned counsel submitted that one of the five ways/modes of proof of ownership to land is by document of title relying on the case of **Yusuf v Adegoke** (2008) vol. 157 LRCN 172 at page 177. According to him the defendant has proved his title to the land by producing exhibits G 1 to G3 which are the documents of title. The defendant has also shown with certainty the identity and location of the land in dispute both by exhibits G 1 to G3 and oral evidence regarding the boundaries and features on the said land relying on the case of **Udenze & Ors v Nwosu & Ors** (2008) vol. 154 LRCN 110 at 137. From the above he urged the court to resolve this issue in favour of the defendant.

On issue 2 Osaghae Esq. submitted that there was a valid customary arbitration held by the Oba of Benin where a decision was reached and published by the Oba's Palace to be upheld by this court. He submitted that

to prove the existence of a valid customary arbitration a party must plead and establish the following ingredients:

- (a) Submission of both parties to the arbitration/arbitrator.
- (b) The arbitration/arbitrator must be recognized by both parties.
- (c) The parties must agree to be bound by the decision, see the case of **Achor v Adejor** (2010). According to him these ingredients exists in this case relying on paragraphs 15 to 27 of the claimant's statement of claim and paragraphs 15 to 19 of the statement of defence of the defendant as well as exhibits H and H1. From the above he urged the court to resolve this issue in favour of the defendant.

On issues 3 and 4, learned counsel submitted that from the evidence before court it is the defendant that was the first to purchase the land in dispute by a deed of transfer dated 9/1/1978 and so has a better title than the claimant who bought his vide customary sale on 24/2/1978 as his (defendant's) purchase is the first in time. See the case of **Ayanwale v Odusami** (2012) vol. 204 LRCN 198 at 214. He submitted that from available evidence in court from the claimant's witnesses particularly CW2 and CW3 the claimant has failed to establish the identity of his land. The claimant had nothing to suggest that he ever had an unhindered possession of the land in dispute as neither the oral evidence in court nor exhibit F showed any feature or

activity of the claimant on the said land. He submitted further that exhibit F was made on 12th of April, 2013 as plan showing land in dispute in suit No. B/56/2013 while this suit was filed on the 7th of February, 2014. It is pertinent to state that CW3 gave evidence to the fact that he was commissioned by CW1 to make exhibit F in 2013. He submitted that the court should disregard exhibit F and expunge same from its records because as at February 2013 this suit had not been filed neither could a litigation survey plan be made in respect of same. Learned counsel contended that the claimant has failed to fulfill the conditions as stated by the Supreme Court in the case of **Orunengimo v Egebe** (2008) vol. 154 LRCN 40 at 43 in that the claimant has not pleaded and proved by evidence the customary sale between Queen Eson Akenzua and the claimant and there are no witnesses to the transaction. Moreso if exhibit A is anything to go by it is a registrable instrument which is not registered and also not properly executed. He submitted that the claimant had completely abandoned his main proof of ownership which is by customary sale. Osaghae Esq. posited that the claimant is not entitled to the reliefs claimed in his statement of claim because he has failed to prove his title to the land in dispute. He urged the court to resolve issues 3 and 4 against the claimant.

In conclusion, learned counsel urged the court to accept and act on the unchallenged evidence of the defendant and grant him his reliefs as contained in the counter claim.

In his written address filed on 28/6/2017, learned counsel to claimant Chief C.O. Ihensekhien adopted issues formulated as his.

On issue 1, learned counsel submitted that the claimant has led evidence to prove his title to the land in dispute by the production of the following title documents viz ó Oba's approval, the Iye-Oba's survey plan made by O.M. Omoregie, the conveyance of the said parcel of land from the Iye-oba to the claimant and the claimant's own survey plan. The claimant went further to show the boundaries of the land by tendering exhibit F i.e. the litigation survey plan of the land in dispute. By these documents the claimant has satisfied the requirements of the law which will enable him to a declaration of title in respect of the portion of land relying on the case of **Idundun v Okumagba** (1976) 9 ó 10 S.C (Reprint) 140. Chief Ihensekhien submitted that exhibit G3 relied upon by the defendant is defective and therefore cannot confer any estate on the first registered owner and cannot avail him against a better title. See **Adebiyi v Williams** (1989) 1 NWLR (pt. 88). He urged the court to hold that exhibit G3 is a document of dubious origin.

On issue 2, learned counsel submitted that the law is that where two persons claim to be in possession of land, the law ascribes possession to the one with a better title. See **Isamotu A. Ashiru v Adetoun Olukoya** (2006) 30 WRN 115, (2006) 5 SCNJ 107. He submitted that the area granted to the claimant by his predecessor in title Madam Eson Akenzua (Iye-oba) was free from any encumbrance whatsoever in accordance with the formality of

acquisition of land in Bini Kingdom. See paragraph 22 ó 27 of the statement of claim and the statement on oath of Peter Agwanowan.

Flowing from the above therefore, it is crystal clear that the land given to the defendant's predecessor in title is not part of the claimant's land now in dispute. This fact is further buttressed by the survey plan by O.M. Omoregie a surveyor to the Queen mother who was commissioned to survey the land sometime in 1974 long before either of the parties got any conveyance to any part of the said land. He contended that exhibit F shows the position of the power lines being a marked feature in the total area granted to the Queen mother but the said feature is not shown in the property survey plan attached to the Certificate of Occupancy tendered by the defendant. The survey plan attached to the Certificate of Occupancy does not represent the land granted on the said Certificate of Occupancy, the defendant having admitted in paragraph 5 of the statement of defence that Queen Eson Akenzua surveyed her land. The said survey plan was not tendered suffice it to say that under cross examination, this feature of power line was denied by the defendant's witness which is further proof that the defendant do not know the land they claim.

On issue 3 learned counsel submitted that customary arbitration is described as òan arbitration in dispute founded on the voluntary submission of the parties to the decision of the arbitrators who are either the chiefs or elders of their community and the agreement to be bound by such decision or freedom to resile where unfavourable.ö See **Agu v Ikewibe** (1991) 3

NWLR (pt.180) 385. According to Chief Ihensenkhien flowing from the above definition a valid customary arbitration was conducted to resolve the dispute between the parties and as it is within their purview to resile from the decision where unfavourable the claimant resiled from the decision of the panel as he did not obtain the justice which he seeks. According to learned counsel the decision reached is contrary to natural justice, equity and good conscience as it was arrived at based on questionable facts presented by the defendant and he urged the court to so hold. He submitted that based on the fact that claimant has exercised his right to resile from the decision or award timeously, he urged the court to invoke its powers under the Constitution and adjudge this case before it.

On issue 4 learned counsel submitted that the defendant has not proved his counter claim as it is predicated on an invalid or defective Certificate of Occupancy. Also the survey plan on the Certificate of Occupancy does not tally with the land in dispute as it is invalid and cannot substantiate the reliefs counter-claimed and he urged the court to dismiss same. He submitted that the claimant on the other hand has proved his title to the land in dispute and urged the court to grant the reliefs sought by the claimant and to dismiss the counter claim.

The defendant filed a rely on point of law on 13/7/2017 in reaction to the claimant's written address and to further buttress his argument urging the court to grant the reliefs in the counter claim and dismiss the claim of the claimant.

I have perused calmly the evidence adduced by both parties and their witnesses. I have also examined the legal submissions of both learned counsel. This case is quite straight forward and the issues can be easily ascertained. The parties derive their title from one person the then Iye-oba, Queen Eson Akenzua. The parties were duly granted parcels of land but the question is which parcels of land belong to each of the party. Whereas the defendant relies on exhibits G, G1 ó G3 which is a certificate of occupancy which contains a property survey plan ISO/EO/87/94 of 31/1/94. This plan is clearly rectangular and definitely fits the dimension 300 feet by 1000 feet. The claimant tendered exhibit B which shows the property of the Queen Akenzua showing two distinct parcels of land. A cursory look at this survey plan made on 30/9/74 makes it plain which land belongs to the defendant and which belongs to the claimant the property survey tendered by the claimant for his land in plan No. ZEKKO/0337/2005 on 11/5/2005 exhibit D by its square shape is entirely and significantly different from the rectangular shape of the property survey in exhibit G, G1 ó G3 tendered by the defendant without one carrying out any super imposition. However because the identity of the land in dispute is what is entirely in question in this case the claimant has beyond any doubt established his parcel of land better than the defendant through the survey plans tendered i.e. exhibits B, D and F. The property survey plan of the predecessor in title of both parties exhibit B shows the boundaries of the land of the claimant as MG1270, **MG1269**, MG1259 and MG1258. In the property survey plan of the claimant all those

beacon numbers above are not established except MG1269. These beacons are re-established in exhibit F. The defendant on the other hand tendered exhibits G, G1 ó G3 where a property survey showing beacon numbers BOAD 4322, BOAD 4320, BOAD 4319, BOAD 4317 different from No. MG 4023, MG 4022, MG 1260 and MG 1261 in exhibit B which is the property survey plan of their root predecessor in title. I am satisfied that doing a pictorial view of all the plans the land of the defendant is obviously that shown with beacon Nos. MG 4022, MG 4023, MG 1261 and MG 1260 in exhibit B and as given in evidence by CW3 who prepared exhibit F for this case. The defendant did not call any surveyor as witness and he is deemed to have admitted the correctness of the claimant survey plans. He appears to rely solely on the fact that he has been granted a Certificate of Occupancy which definitely will not suffice. In the case of **Otukpo v John** (2012) 7 NWLR (pt. 1299) page 357 the court held that òa certificate of occupancy is a prima facie evidence of title or possession. However, it is not a conclusive proof of title to the land it relates to. The mere production of a certificate of occupancy by a party does not by itself entitle the party to a declaration. Consequently, if it is successfully challenged, it can be nullified. Where there is evidence to show that the certificate was wrongly obtained, the court is entitled to nullify itö.

The next issue for determination is whether there has been a customary arbitration over this matter which can be regarded as final and agreed to by both parties to rob this court of jurisdiction. There is no doubt

that both parties went before the sons of the original predecessor in title Queen Eson Akenzua i.e. Enogie Edun Akenzua and before the chiefs in the Palace where by exhibit H2 was made on 8th November, 2012. However by instituting this action it is clear that the claimant was not satisfied exhibit E written by the claimant seeking the intervention of the Palace in resolving the land dispute did not commit to taking the decision of the Palace as final. The claimant made it clear from the letter that ōI took this move instead of rushing to court because of the name or names that are involved. I consider it most disrespectful to be singing the names of the Royal family in the public in a matter that could be easily handled by the Royal familyö. Filing this action in court is proof of dissatisfaction and contrary to the submission of learned counsel for the defendant the court find that in the case of **Egesimba v Onuziike** (2002) 15 NWLR (pt. 791) 466 at 507 the Supreme Court Per Ogundare, JSC stated the ingredients for a valid customary arbitration as follows:

- (a) That parties voluntarily submitted their disputes to a non-judicial body to wit their elders or chiefs as the case may be for determination.
- (b) The indication of the willingness of the parties to be bound by the decision of the non-judicial body or freedom to reject the decision where not satisfied.
- (c) That neither of the parties has resiled from the decision so pronounced.

In this case the claimant resiled from the decision of the Palace by filing his action soon after in this court. Also in **Duruaku Eke & Others v Udeazor Okwaranya & Others** (2001) 12 NWLR (pt. 726) 181 at 208 Per Uwaifo, J.S.C. where it was held that for there to be a valid customary arbitration capable of raising estoppel, five ingredients must be pleaded and established and proved namely:

- (a) There had been a voluntarily submission of the matter in dispute to an arbitration of one or more persons.
- (b) It was agreed by the parties either expressly or by implication that the decision of the arbitrators would be accepted as final and binding.
- (c) The said arbitration was in accordance with the custom of the parties or of their trade or business.
- (d) The arbitrators reached a decision and published their award.
- (e) The decision or award was accepted at the time it was made.

In this case there is no indication that the claimant accepted the decision of the Palace at the time of the award. Consequently, I find that the claimant has proved the correct identity of the land in dispute as his land and the defendant has obviously trespassed unto his land. The court therefore declares that the claimant is entitled to the grant of a statutory right of occupancy of the land measuring 3.025 hectares situate and lying at Okha village Area between Sapele New Express Way and the Old Benin Sapele Road clearly delineated in red ink in exhibit F. The claimant is granted

continued possession over same as the defendant is adjudged a trespasser over the said parcel of land verged red in exhibit F. I order perpetual injunction restraining the defendant either by himself or his servants, privies, agents, employees and assignees howsoever described from entering upon or committing further acts of trespass upon the said land.

An order setting aside the Certificate of Occupancy No. BDSR14688 shall not be made because the said Certificate of Occupancy covers a parcel of land distinct from that in dispute. Consequently, the counter claim of the defendant is made only as it affects the parcel of land shown in the property survey of Eson Akenzua as MG4022, MG4023, MG1261, MG1260 in exhibit B and exhibit F which I find to be replicated in property survey plan in exhibits G, G1 ó G3 now bearing beacon Nos. BOAD 4322, 4317, 4319, 4320. The defendant is not entitled to statutory right of occupancy over the land verged red in exhibit F.

In the light of the above the counter claim for general damages of N1million is dismissed so also that for perpetual injunction.

Hon. Justice E. F. Ikponmwen
Chief Judge.
23/10/2017

Counsel:

Chief C. O. Ihensenken for the Claimant.

E. O. Osaghae Esq. for the Defendant.