


**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**

**WEDNESDAY, 7<sup>TH</sup> JUNE, 2017**

**SUIT NO. B/59/2014**

**BETWEEN:**

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| <ul style="list-style-type: none"><li>1. PA EWANSIHA OWIEADOLOR<br/>(THE ODIONWERE OF ARUOGBA COMMUNITY)</li><li>2. PA GOODLUCK UHUMAROGIE<br/>(THE ASSISTANT ODIONWERE OF ARUOGBA<br/>COMMUNITY)</li><li>3. CHIEF FRANK OGBARETIN</li><li>4. PA DANIEL EMUMWEN</li><li>5. PA REUBEN OMOREGIE</li><li>6. PA JOHNSON OGIERIAKHI<br/>(FOR THEMSELVES AND ON BEHALF OF ARUOGBA<br/>COMMUNITY)</li></ul> |  | <b>CLAIMANTS</b> |
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**AND**

MR UHUNAMURE OGHAGBON	í	í	í	í	. í	í	DEFENDANT
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**J U D G M E N T**

The Claimants instituted this action vide a Writ of Summons filed on 11<sup>th</sup> day of February, 2014. By paragraph 12 of the statement of claim filed on the same date, the claimants claims against the defendant as follows:

- (1) A DECLARATION that the claimants are the beneficial owners of all that piece or parcel of land measuring 2,500 feet by 5000 feet near pig farm, 400 feet by 700 feet opposite Becky School and 2100 feet by 4000 feet at the boundary between Aruogba Community and Egbire Community lying and situate at Aruogba village, Oredo Local Government Area, Benin City within the

jurisdiction of this Honourable Court and therefore entitled to a Statutory Right of Occupancy over the said land.

- (2) A Perpetual Injunction restraining the defendant, his agents, parties, assigns and servants from trespassing into the claimants' land subject matter of this action.

The defendant filed his statement of defence and counter claim and other accompanying processes on 28/10/2014. By paragraph 39 of the defendant's 2<sup>nd</sup> Further Amended Statement of Defence/Counter claim filed on 24/11/2016, the defendant counter claims against the Claimants/Defendants to counter claim, their Privies, Successors-in-title or Servants as follows:

- (a) A Declaration that the Defendant/Counterclaimant is the one entitled to a grant of a Certificate of Occupancy in respect of all that parcel of land measuring approximately 400 feet by 700 feet covered by the document dated the 11<sup>th</sup> day of May, 2001 and shown in the Litigation Survey Plan with No. JAO/ED/2016/36L;
- (b) A Declaration that the Defendant/Counterclaimant is the one entitled to the grant of a Certificate of Occupancy in respect of all that parcel of land measuring 500 feet by 2400 feet less those parcels transferred by the Defendant/Counterclaimant to other developers as shown in the Litigation Survey Plan with No. JAO/ED/2016/36L;

- (c) A Declaration that the Defendant/Counterclaimant is the one entitled to the grant of a Certificate of Occupancy in respect of all that parcel of land measuring 450 feet by 2600 feet less those parcels transferred by the Defendant/Counterclaimant to other developers as shown in the Litigation Survey Plan with No. JAO/ED/2016/36L;
- (d) The sum of ₦5,000,000.00 (five million naira) only as General Damages for the trespass of the Claimants/Defendants to counter claim on the Defendant/Counterclaimant's parcels of land as shown herein.

In the unexplained absence of the claimants and their counsel and after several adjournments the court struck out the case of the claimants on 13/11/2015 following the application made by Mr. D.A. Uhumwangho of counsel to the defendant/counterclaimant.

The defendant/counterclaimant opened his case on 10/12/2015 with counterclaimant witness No. 1, Mr. Clifford Omoregie adopting his witness statement on oath filed on 30/9/2014 stating that he is a member of the Plot Allotment Committee of Aruogba Community and that they sold three different parcels of land to the defendant and the defendant has since being in possession of the said parcels of land. According to him, sometime in the year 2000, the Edo State Government de-reserved for their community an expanse of land measuring 142.7 hectares and it is from this de-reserved land that they sold the three different parcels of land to the defendant. When

the Government of Edo State dereserved the said land, they were asked to develop same within a time frame else the de-reservation will be cancelled and this condition made them begin to look for investors that will buy land from their community to enable them raise fund to develop the community. They approached the defendant whose wife hails from their community and after some time the defendant agreed to buy the three pieces of land, i.e. 500 feet by 2400 feet, 450 feet by 2600 feet and 400 feet by 700 feet. They used the proceeds of sale to develop their community.

On 10/12/2015, counterclaimant witness No. 2, Chief Victor Idubor Obakhavbaye adopted his witness statement on oath filed on 30/9/2014. He is also a member of the Plot Allotment Committee of Aruogba community. He is the second in command in Aruogba community while CCW1 is the traditional head of the community. He testified along the same lines as CCW1.

On 16/2/2016 Counterclaimant witness No. 3, Gerald Omoregie adopted his witness statement on oath filed on 30/9/2014. He testified along the same lines as CCW1 and CCW2.

Under cross examination by Mrs. Bello CCW3 testified that his late father had told him about the land. He came to court to say what his father told him. He cannot give a description of the land in dispute.

On 14/3/2016, Counterclaimant witness No. 4, Usienfo Omoregie adopted his witness statement on oath filed on 30/9/2014. He stated that he was appointed the pointer of Aruogba community sometime in 2008. Rev.

Dickson Ogbahon who at that time doubled as the community Secretary was also one of his predecessors in office. Rev. Dickson Ogbahon told him when he became a pointer that their community through the Plot Allotment Committee sold three parcels of land in the area that was de-reserved by Edo State Government for their community to the defendant. That it was the money paid by the defendant that was used to open up the community and install some facilities like electricity etc. They have no problem with the defendant. Some of the claimants on record were part of the Plot Allotment Committee and they are busy bodies. The defendant has never trespassed on their community land.

On 5/4/2016, the defendant Prince Uhunamure Oghagbon adopted his witness statement on oath filed on 30/9/2014 and 4/12/2014. He stated that he does not own any parcel of land at Aruogba community measuring 2500 feet by 5000 feet or 2100 feet by 4000 feet and he has never laid claim to any such land. He owns three large parcels of land at Aruogba community measuring 500 feet by 2400 feet; 450 feet by 2600 feet and 400 feet by 700 feet respectively which he acquired from the Aruogba community and he has proof of ownership. It is not true he used the Police to harass the claimants or any other person but he only reported the conduct of the claimants and their thugs to the Police when they unlawfully encroached and trespassed on his land. He is into real estate business and carries out his trade in the name and style of Oghagbon Properties. He has transferred portions of his land to willing developers who have paid their development fees and elders fees to

the relevant bodies in the community. His land measuring 500 feet by 2400 feet is part of the land de-reserved by the Edo State Government. He has been in effective possession of the land since he bought them. He tendered exhibits A, B, B1, B2, B3, B4 and B5, C, C1 ó C4, D and E.

Under cross examination by Mrs. Bello, the defendant stated that he has transferred part of the land in dispute to those whose names appear on the receipts. They are eleven persons he transferred pieces of land to. Exhibit C1 relates to land measuring 200 feet by 100 feet which he sold. He did not file a litigation survey plan. The land he sold to persons in the receipts is part of his land.

On 01/11/2016, Counterclaimant witness No. 5, James Amadi Osazuwa adopted his witness statement on oath filed on 30/9/2016. He stated that the defendant/counter claimant engaged his services to produce exhibit F which he did. Before commencing work he asked for the defendant's title documents and he was shown same. On the left hand side of exhibit F is shown the three parcels of land acquired by the Defendant. On the right hand side of exhibit F is the highlight of the various encroachments and trespass committed by the claimants and their privies on Defendant/Counterclaimant's parcels of land i.e. parcels A and C. There is no trespass on parcel B. Parcel A is the land covered by the document titled "Agreement of Confirmation of Sale and Transfer of land dated 21/5/2001." Parcel C is covered by the documents listed in paragraph 7 (c) and (d) above. Parcel B is not in dispute.

On 13/3/2017 Counterclaimant witness No. 6, Mrs. Kate Oghagbon adopted her witness statement on oath filed on 24/11/2016. She testified along the same lines as the defendant. She tendered exhibits G and G1.

At the close of evidence, the Claimants did not call any witness in defence of the counter claim and did not file any written address. On 27/4/2017, D. A. Uhumwangho Esq. of counsel to the defendant adopted his written address filed on 27/3/2017. Learned counsel submitted that a counter claim is an independent action of its own and failure to file a defence to the counter claim means they have admitted all the facts or averments in the counter claim. Facts admitted need no further proof. See Section 123 of the Evidence Act 2011 and the cases of **Consolidated Resources Ltd v Abofar Ventures Nigeria Ltd** (2007) 6 NWLR (pt. 1030) 221 at 231; **Olaleye v Wema Bank Ltd** (2011) 3 NWLR (pt. 1233) 93 at 199. It is the law that the Defendant/Counterclaimant must establish his claim on the strength of his case. He cannot place any reliance on the weakness of the defence. The Defendant/Counterclaimant has properly identified the land in dispute through exhibit F. See **Tukuru v Sabi** (2013) 10 NWLR (pt. 1363) 442 at 462; **Matanmi v Dada** (2013) 7 NWLR (pt. 1353) 319 at 330. He submitted that these facts as presented by the Defendant/Counterclaimant were uncontroverted and are credible. The court is therefore enjoined to accept them in proof of this case. Exhibits A, G and G1 are receipts which show that the defendant/counterclaimant bought the various parcels of land.

In conclusion, learned counsel submitted that the defendant/counter claimant has proved his case on the preponderance of evidence as required by law. He therefore urged the court to enter judgment in favour of the defendant/counter claimant and grant him his reliefs as contained in his counter claim.

I have examined the evidence and exhibits in this case. I have also read the legal submissions of learned counsel. The case at hand deals with trespass and the damages that should be paid for the acts of trespass as well as whether declaration of title to land can be made to give the defendant/counterclaimant the right to a grant of Certificate of Occupancy. In the case of **Olohunde v Adyoju** (2000) 14 W.R.N. 160 at 174 Iguh J.S.C. stated that *“It is an elementary principle of law that whenever a claim for trespass is coupled with a claim for an injunction, the title of the parties to the land in dispute is automatically put in issue.”* The Supreme Court further held that *“The law is well settled that when the issue is as to which of the two parties has a better right to the possession or occupation of a piece of land in dispute, the law will ascribe such possession and/or occupation to the person who proves a better title thereto. In the same vein, where two parties are claiming possession, the possession being disputed, trespass can only be at the suit of that party who can show that title of the land is in him.”*

Furthermore in the case of **Ezukwu v Ukachukwu & Anor** (2004) 11 M.J.S.C. 66 at 91 Per Edozie, JSC it was held that *“A claim in trespass is*

*not dependent on proof of title to land. A Plaintiff who fails to prove title may not necessarily fail in his action for trespass. If he establishes by evidence acts of exclusive possession, his claims for damages or an order of injunction may be granted.”*

From the evidence before me, I find that the defendant/counter claimant has title documents to the parcels of land in dispute exhibits G and G1, a deed of transfer between the defendant and the Aruogba community. He has also shown acts of possession by selling of part of the parcels of land in dispute to the people specified in exhibits B, B1 ó B5 and C, C1 ó C4. The claimants on the other hand abandoned their case and it was dismissed on 13/11/2015. The claimants did not challenge or controvert the evidence of the defendant/counter claimant and the court is enjoined to act upon such unchallenged evidence. See **Olohunde v Adeyoju** (supra) at page 185 and **Kayili v Yilbuk & Ors** (2015) 244 LRCN 108 at 156.

In the case of **Addah & Ors v Ubandawaki** (2015) vol. 241 LRCN 1 at 24 and 25 the Supreme Court per Muhammad, JSC stated thus *“In an action which seeks for declaration of title to land, the burden of proof of the identity and boundaries of the land in dispute is squarely on the claimant which can be discharged either by oral evidence or by survey plan showing clearly the area to which his claim relates. It is thus, necessary for a Plaintiff who claims declaration and injunction to properly and unmistakably identify the land in dispute in view of the order for injunction which cannot certainly be granted in respect of an undefined area, where he*

*fails to prove the boundaries of the land he asserts to be in dispute or did not satisfactorily describe the dimension and locality or the description contradicts the plan, the proper order to make is one of dismissal of the claim.”*

In this instant case, the defendant/counterclaimant has identified his land through exhibit F and his evidence before court. Exhibit F is a litigation survey plan prepared by J.A. Osazuwa on 8/7/2016 which has satisfied the requirement of the law. In **Addah & Ors v Ubandawaki** (supra) at page 35 per Ogunbiyi, JSC the Supreme Court stated further that *“A claimant who asserts to be entitled to a relief has the onus of establishing its case without regard to the defendant’s case.”* In this case the defendant/counterclaimant has established his case by his evidence and the exhibits tendered which were unchallenged and so he is entitled to his reliefs as claimed.

In the circumstance, I enter judgment in favour of the defendant/counterclaimant as he has proved that he has a better title to the land than the claimants who abandoned their claim.

(a) Consequently, I declare that the defendant/counterclaimant is the one entitled to a grant of Certificate of Occupancy in respect of all that parcel of land measuring approximately 400 feet by 700 feet covered by the document dated the 11<sup>th</sup> day of May, 2001 and shown in the Litigation Survey Plan with No. JAO/ED/2016/36L;

(b) I declare that the defendant/counterclaimant is the one entitled to the grant of a Certificate of Occupancy in respect of all that parcel of land measuring 500 feet by 2400 feet less those transferred by the defendant/counterclaimant to other developers as shown in the Litigation Survey Plan with No. JAO/ED/2016/36L;

(c) I declare that the defendant/counterclaimant is the one entitled to the grant of a Certificate of Occupancy in respect of all that parcel of land measuring 450 feet by 2600 feet less those parcels transferred by the defendant/counterclaimant to other developers as shown in the Litigation Survey Plan with No. JAO/ED/2016/36L;

(d) I order the claimants to pay ₦1 million (one million naira) as general damages to the defendant/counterclaimant for their trespass on the defendant/counterclaimant's parcels of land.

Hon. Justice E. F. Ikponmwen  
Chief Judge.  
07/06/2017

**Counsel:**

Chief O. T. Nwoha for the Claimants.

D. A. Uhumwangho Esq. for the Defendant.