IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UBIAJA JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON TUESDAY THE
28TH DAY OF JANUARY, 2020.

SUIT NO. HUB/11/2014

BETWEEN:

1. CHIEF S.M. IMANGBUDU
2. MR. MOSES EBOSELE
3. MR. PETER AGHENTA
   (For themselves and on behalf of
   Okpogho Community, Emu)

} CLAIMANTS

AND

1. CHIEF WILLIAM EHIBHIATOR ISIDAHOMHEN
2. PROF. MIKE ISOKUN
3. MR. SATURDAY IRENBALUMHEN
4. MR. STEPHEN OSUENMHEN
   (From Okede Quarters, Emu)
5. MRS. JANET OSOBASE
   (From Idumu-Ose Quarters Emu)

} DEFENDANTS

JUDGMENT

The Claimants claim vide their Further Amended Statement of Claim dated the 19th day of July 2018 against the Defendants jointly and severally as follows:

(i) A Declaration that Okpogho Community is the owner and therefore entitled to apply for Customary Right of Occupancy over a piece or parcel of land from the right side coming from River Utor and climbing the hill after Okede Community to Okpogho Community on the said right side from Odile Okusun's house, Mr. Isobo Amuobanose, Arewe Ibizugbe, Pa. Edo Omoarekhan, Prof. Joseph Aghenta whose house is directly opposite the disputed land, Mr. Robinson Agboi and on the left hand side of Okpogho-Emunekha Road is the house of Monday Itumu, Pa. Aghenta Enamo, Chief Monday Ebelehita, Pa. Ibizugbe (late) which is within 50 ft. by 50 ft where mast is being erected, Sunday Omodiagbe and then Sunday Aboi within the

jurisdiction of this Honourable Court;

(ii) Perpetual Injunction restraining the Defendants whether by themselves, their servants, agents, privies and by whomsoever claiming through them from trespassing or further trespassing on the said piece or parcel of land of the Claimants; and

(iii) N1, 000,000.00 (one million naira) being General Damages for trespass.

The Claimants in proof of their case, called witnesses who deposed to statements on oath. In his evidence in chief, the 1st Claimant Chief S.M. Imangbudu stated that Okpogho Community Emu is separate and distinct from Okede Community and Idumuoise Community-Emu. That Emu was founded by the following people: (1) Egua (2) Auma (3) Idumuogbe (4) Uguni (5) Idumuenima (6) Obo (7) Okpogho (8) Egben in Emunekhua and formed the earliest quarters in Emu. That to be bounded in peace, unity and safety each of the eight (8) quarters brought one OKHURE (Effigy) and Okede community was not one of the eight quarters that founded Emu in Esan South East L.G.A.

The 1st Claimant further stated in his Evidence on Oath that Okpogho Community was long in existence before Okede Community and therefore senior to Okede community in Emu.

He also testified that the 1st Defendant's mother hailed from Okpogho and that when she died the 1st Defendant in accordance with Esan Custom, brought his mother's corpse to Okpogho for burial in a building he erected for that purpose.

The 1st Claimant further stated that Okpogho Community Emu granted land to some members of Okede community to farm on Okpogho Community land such as Omofuegbe Okosun, Erameinedia Okosodo, and Agbonifo. That permission to grant such application was usually granted on presentation of one bundle of yam and a keg of palm wine from members of Okede community.

That the Okpogho community has been in active possession/occupation of their present abode since 1940 without any let or disturbance until recently when Defendant's community started laying claim to the land in dispute.

That coming from River Utor and climbing the hill after Okede community to Okpogho community on the right side are Iyogbon's house opposite Okpogho community Ughe and Okpogho community starts from Odile's house, Arewe Ibizugbe, Ebosele Edo, Prof. Aghenta whose house is directly opposite the disputed land where the mast is being erected and on the left hand side of Okpogho-Emunekha road is the house of Monday Itumu, Pa Aghenta Enamon, Chief Monday Ebalehita, Pa Ibizugbe (late) where mast is being erected, Sunday Omodiagbe and then Sunday Agboi.

That the above listed persons have lived in their various houses for a period spanning between 50 to 100 years undisturbed until 2010 when the 5th Defendant who is from Idumouse quarters, Emu brought Globacom Company to erect a mast right in Okpogho community land

which prompted Okpogho community to sue the 5th Defendant in the palace of the Regent of Emu in 2010.

That during the pendency of the matter, the 2nd Defendant requested to be allowed to settle the matter out of the palace stating that the land now in dispute belongs to Okpogho community. That when the palace did not receive any feedback from the 2nd Defendant, the palace adjudicated on the matter and decided in favour of Okpogho on 23/4/2010.

The 1st Claimant further testified that a letter by the 2nd Defendant to Globacom dated 12/1/2013 to the effect that the land now in dispute was jointly owned by Okede and Okpogho communities prompted the Okpogho community through their Odionwere, Pa Brown Iriahmhein to sue Chief Ehibhiator and Mr. Alfred Osobase (aka Soso) at the Palace of the Onogie of Emu and judgment was given in favour of Okpogho community on 18/1/2014.

The 1st Claimant also stated that in 1951 the existing Okhuesan Road through Ugun to Ohordua was expanded by the public work department (PWD) and that a road was constructed through Ugun, Obo and Okpogho to Emunekhua during the administration of Chief Ehidiamen the Onogie of Okhuesan, the Chairman of Emu Local Government Council. The 1st Claimant further stated that Alutor Shrine has never been the boundary point between Okpogho community and Okede community.

While testifying, the 2nd Claimant adopted his deposition dated the 18th day of November, 2016 and additional deposition dated 27th day of July, 2017 and tendered exhibits A, B, C, D, and E in proof of their claim.

In his evidence, the 2nd Claimant stated *inter alia* that the land in dispute was deforested by the Okpogho community's forefathers many years ago being one of the eight (8) earliest settlers in Emu-land and the others are Egua, Aumu, Idumuogbe, Idumuenema, Ugun, Obo and, Egben in Emunekhua and Okede community was not one of the eight earliest settlers in Emu.

He further stated that Okpogho community land is separate and distinct from Okede land and also separate and distinct from Idumu-Ose Ibhiadan Emu and that Okpogho community has common boundaries with Okede community on one side and Emunekhua on the other side. That Alutor shrine is within Okpogho community and is not the boundary between Okpogho community and Okede community.

He testified that trouble started when the 5th Defendant brought Globacom Company to erect a mast on Okpogho Community land when the 1st defendant was one of the Chiefs at the palace of the Regent of Emu that decided the case in favour of Okpogho community in 2010. That the 1st Defendant on getting to know that the sum of N400,000 was paid to the 5th Defendant by Globacom for the land in dispute, the 1st Defendant turned round to join the 5th Defendant in the trespass on Okpogho land by claiming that the land belongs to Okede Community.

The 2nd Claimant further testified that Okpogho community gave the 1st Defendant who is from Okede a parcel of land to bury his mother who hailed from Okpogho community. That Okpogho community allowed him to bury his mother on the said piece or parcel of land on

which he raised a structure up to window level in line with Esan native law and custom to the effect that when a married woman is dies, her corpse must be returned to her place of birth for burial.

The 2nd claimant further stated in his evidence that the 5th defendant haled from Idumouse quarters which is separate and district from Okpogho quarters and that it was when Okpogho youths were clearing and cleaning their playing ground (Ughe) in 2010 that the 5th defendant came with Globacom officers claiming that a portion of land inside Okpogho quarters Emu belonged to him. He refuted the claim of the 5th Defendant.

He further testified that when the 5th Defendant was sued at the palace of Emu by Okpogho community, the 5th defendant approached the 2nd Defendant to intervene and settle the matter out of the palace. That the 2nd Defendant invited some members of Okpogho and Okede communities and the 5th Defendant for settlement wherein the 2nd Defendant categorically stated that the land belonged to Okpogho community of Emu and refunded the sum of N10, 000 summon fees to Okpogho community.

That later on, the Okpogho community discovered that the 2nd defendant in his letter to Globacom dated 23/1/2013 stated therein that the land was jointly owned by Okede and Okpogho communities in conflict with his earlier statement that the land belonged to Okpogho Community .

That Okpogho community sued Okede community and Mrs. Janet Osobase on the 21/12/2013 at the Onogie's palace and same was decided in favour of Okpogho community on 18/1/2014 by the Royal Palace of Onogie Emu vide Exhibit "A".

That it was when the Defendants persistently claimed the ownership of the piece or parcel of land right within Okpogho quarters that they instituted this action against them for trespass.

The last witness who testified for the Claimants was one MR. SUNDAY OMODIAGBE. He stated that Okpogho Community is one of eight earliest settlers in Emu land being in the 7th position and Okede Quarters is not one of the eight. He emphasized that Alutor Shrine is not the boundary of Okede and Okpogho communities as the shrine is right inside Okpogho land. That the land now in dispute has a common boundary with his house on one side. That the Defendants are now laying claim to this disputed land because of the Globacom mast being erected on the said land.

The Defendants opened their defence and the 1st and 2nd Defendants testified in their defence. In his testimony, the 1st Defendant stated that the 1st claimant is his cousin. That he was the youngest and now the only surviving member of the age-grade group (Egbonughe) that constructed the 2-kilometer Okede-Emunekhua road that ends at the Aluto shrine boundary with Okpogho. That the head of the Age-grade group was Ailen of Okede, the 2nd member was Umhoilin, the 3rd member was one Abakpoya and one Ejaina of Okede was the 4th member.

That among those who planned and executed the road project were Urefoh Ojienuta who is the supervisor that supervised the work, Okotor Isidahomhen his elder brother, Ebhonfuegbe Okosun, Orukpe Imhansionmhan and the 1st Claimant. That the road which was constructed in

1945 passed through the length and breadth of Okede land and passed through the farmland of Osuemhen of Okede and some other members of Okede community.

The witness stated that at the time of this road construction, the 1st claimant was at Ubiaja with his father and one Late Elder Ibizugbe, the head of Okpogho community was the first to apply to Okede to be allowed to build his house along the "new" road. That because Pa. Ibizugbe's father, Pa. Isemhin was an indigene of Okede community, his request to be allowed to build his house on Okede land was easily granted.

He stated that subsequently, some few members of Okpogho community started building on Okede land. That today, there are only twenty-four houses built on both sides of the Okede-Emunekhua road. That the Ogboni house along the road was built on the land given to Boniface Abakpoya by Eramhenedia of Okede. That Boniface Abakpoya who was then the leader of the Ogboni confraternity was his step-brother and a cousin to the 1st claimant in this suit.

That between 1914-1918 when there was an outbreak of small-pox the area occupied by Okpogho people was used as quarantine for the victims of the small-pox epidemic. That Okpogho people are itinerant migrants who first settled at a place called **Adaogodogbo** (grassland) near Emunekhua and later moved to Ekpofiere area and from there to Okede land. That it was after they killed a Roman Catholic Priest that they completely fled their land to avoid reprisal.

He stated that over the years, Okede have tried to accommodate Okpogho by allowing them to join in their annual Ohor Festival, Cultural-exchange ceremonies such as the Atuagbo-Okede cult of physical fitness, **Ibhiarhimhingbe.**

That Okpogho has no community market; it is Ibhiadan community market that sustains them, just as they depend on Okede Rivers and streams for their water supply. That Okpogho people are not in their homeland. That it was when Globacom refused to heed their warning that they decided to institute a case of trespass against the 5th defendant and Globacom.

That Okpogho's claim as the owner of Okede land is false and it is the belated idea of the 1st and 2nd claimants who are in diaspora. That the 1st claimant is a retired police sergeant living in Lagos and he is not a registered voter in their ward, while the 2nd claimant lives in Benin and holds no political office even at the ward level. That Late Orukpe Ibizugbe of Okpogho testified in 2013 at the Emu Palace that it was Okede community that gave his late father Ibizugbe the land in dispute to build his house.

Professor Mike Isokun, the 2nd Defendant testified next. He stated that he is an elder and member of Okede/Ibhiadan council. That with the exception of the 5th defendant, the defendants are elders and natives of the Okede community. That Okede is a kindred of Ibhiadan kingship system which consists of Odogbe, Idumu-Oise and Okede. That the 5th defendant is from Id-Oise and not from Okede. That the 5th defendant and Globacom are the 1st and 2nd defendants in a case of trespass before this honourable court.

He stated that the 1st and 2nd claimants are natives of Okpogho in diaspora who have always lived in Lagos and Benin respectively with only a smattering knowledge of the ethnography of Emu. That Okpogho is not one of the autochthonous units of Emu kingdom.

That it has been more plausible to believe that Okpogho was likely to be Dr. Okojie's OKPOGHO group that was founded by some troublesome elements that migrated from Okede. That the etymology of the name Okpogho is a derivation of the word Okpokpo meaning trouble.

That Okpogho first settled in a grassland near Emunekhua, from where they moved South to the water-logged area along Usolo-Emunekhua road, from where again they eventually relocated to Okede land, along the Okede-Emunekhua road that was constructed in 1945 by the Okede age grade force (Egbonughe) assisted by late surveyor Urefo Ojiemuta.

That the 2 kilometers road which ends at Okpogho's Aluto shrine was not constructed through Okpogho. That the Aluto shrine marks the boundary between Okede and Okpogho.

That the Claimants cannot challenge the Okede community for trespassing if indeed the Okede-Emunekhua road constructed in 1945 of were to pass through their land. According to him, Okpogho should first establish their ownership of the entire land through which Okede-Emunekhua passes before claiming a portion of the land by the road side as their own. That it was when the 5th defendant and Globacom ignored his entreaties and warnings that Okede community sued them for trespassing on their land.

That his mediation in the matter between Okpogho and 5th defendant was for peace to reign in the area and to stop Okpogho from squandering money lobbying the Emu Palace for a futile case. That his idea was to try to accommodate both parties in the Globacom project as "agents" and members of the Okede community at large. That his letter to Globacom dated 23rd January 2013 was the outcome of his arbitration and reconciliation of all parties and various interests in the Globacom project.

That Pa. Ibizugbe's last son Mr. Orukpe Ibizugbe (who died early this year 2014) had in 2013 gone to Emu palace to testify against the 5th defendant that (it was) his father Pa. Ibizugbe that built his house near the spot where Globacom was erecting the mast and that it was Okede Community who permitted his father to build on their land following the construction of the Okeke-Emunekhua road in 1945.

That the 3rd claimant Mr. Peter Aghenta (who stood in for the Elder and head of Okpogho; Mr. Brown Iriarho-mhien) and others represented the Okpogho community at the conciliatory meeting held at the Okede Community Town Hall on Monday 21st January 2013. That the 1st and 2nd claimants who are ex-police man and politician respectively, acting as advocates for their people took the matter that was already before a court of competent jurisdiction to Emu Palace whereupon Okede Community's Lawyer in the case issued a Caveat to the Onojie of Emu.

The Defendants closed their case and the suit was adjourned for adoption of Written Addresses.

Both counsel filed Written Addresses. The Defendant's Final Written Address was dated and filed on the 12th of November, 2018 and the Claimants' Final Address was dated on the 27th and filed on the 28th of November, 2018.

In his final address, the learned counsel for the Defendants, ***Dr. Bola Adekanle*** adopted his Written Address. In his address, he formulated a sole issue for determination as follows:

"Whether from the evidence before this Court, the Claimants have proved their case on the balance of probability to warrant the judgment of this Honourable Court in their favour"

Opening his argument on the sole issue, he submitted that the Claimants have failed to prove their case on the balance of probability to warrant the judgment of this Honourable Court in their favour.

Learned counsel submitted that there are five different ways of establishing title to land as stated in the case of ***Idundun v. Okumagba (1976) 9-10 S.C. 227 at 246.*** These are:

1. By traditional evidence;
2. By the production of documents of title which must be duly authenticated in the sense that their due execution must be proved;
3. By acts of ownership extending over a sufficient length of time which are numerous and positive enough to warrant the inference that the person is the true owner;
4. By acts of long possession and enjoyment of land which may be prima facie evidence of ownership of the particular piece or parcel of land or quantity of land; and
5. Proof by possession of connected or adjacent land in circumstances rending it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.

He also referred the Court to the following cases: ***Nkado v. Obiano (1997) 50 L.R.C.N. 1084*** and ***Osidele v. Sokunbi (2012) 15 N.W.L.R (Pt.1324) 470.***

He submitted that each of the five methods of proving title to land is independent of one another. That reliance on any one of them is sufficient to prove title to land and he relied on the following cases: ***Ukpakara v. Egbevhue (1996) 40/41 L.R.C.N. 1481;*** and ***Nwosu v. Udeala (1990) 1 N.W.L.R. (Pt. 125) 632 @ 656.***

He posited that in the instant case, the Claimants relied heavily on the 1st method of proving title to land stated above to wit: traditional evidence through deforestation. He said that they however failed to trace their root of title from the very first owner or owners of the land down to themselves. He said that the Claimants merely stated that the land in dispute was deforested by the Okpogho Community centuries ago by their forefathers without more. That there is no evidence or pleading traced to the particular person or persons that deforested or founded the land in dispute.

He submitted that it is not enough to state that a land was deforested by the fore fathers or forebears of a party. That a party relying on traditional evidence must plead and lead cogent evidence on the person who founded the land and the particulars of the intervening owners down to themselves, particularly when the Defendants are disputing issue of ownership with them. For this view, he referred to the case of: ***Sogunro & Ors. vs Yeku & Ors (2017) 267 L.R.C.N 165 @ 194JJ & 195AU ratio 6*** where the Supreme Court held thus:

> ***"…Above all, it is not sufficient for a party who relies for proof of title to land on it (traditional evidence), as in the instant case, to merely prove that he or his predecessor in title had owned and possessed the land from time immemorial…. Such a party is bound to plead such facts as:***
>
> ***1. who founded the land;***
> ***2. how the land was founded; and***
> ***3. the particulars of the intervening owner through whom he claims."***

Learned counsel submitted that the Claimants did not give cogent and clear evidence of the particulars of the intervening owners through whom they claim and as such they have not proved their root of title to be entitled to the judgment of this Honourable Court in their favour and he urged the Court to so hold.

He further submitted that the Claimant is to succeed on the strength of his case and not on the weakness of the Defendant's case. That where the Defendants did not counter-claim as in the instant case, the burden of proving title is on the Claimants throughout the case without shifting

to the Defendants. That where the case of the Claimant is weak, his case is bound to fail and he urged the Court to so hold.

Counsel submitted that in further proof of their case; the Claimants tendered Exhibit A which is the judgment in respect of the customary arbitration between the parties. He submitted that the said judgment is not binding on the Defendants in this suit and as such has no evidential value in this suit.

He contended that the said judgment does not meet the requirements needed for this Honourable Court to act on it because the Defendants in this suit did not submit themselves fully to the arbitration as they refused to attend the meeting three times even on the day the said judgment was give on ground that they do not want to submit themselves to the customary arbitration and that the matter was already in Court. He commended the said Exhibit A to the Court.

Counsel submitted that for this Honourable Court to recognize customary arbitration, the following conditions must be satisfied:

1. The parties must voluntarily submit their disputes to a non-judicial body, to wit their elders or chiefs as the case may be for determination;
2. There must be an 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; and
3. Neither of the parties has resiled from the decision so pronounced.

In support of this submission, he relied on the following decisions: ***Odonigi v. Oyeleke (2001) 84 L.R.C.N. 658 @ 675FI Ratio 5;*** and ***Agu v. Ikewibe (1991) 3 L.R.C.N 686.***

He submitted that all the factors stated above must be considered conjunctively. That the Defendants did not submit themselves fully to the customary arbitration and even refused to go to the palace after several adjournments. That this is a clear demonstration of their unwillingness to accept the decision of the arbitration hence this action in court. That this can also be seen from the refusal of Okede community to withdraw the suit from court despite the instruction given to them by the palace. He maintained that having rejected the decision of the customary arbitration, the said judgment is not binding on them and he urged the Court to so hold.

Counsel submitted that the action of the Claimants in respect of the customary arbitration amounts to sub judice. That the Onojie, having become aware that there was a pending action in respect of the land, still went ahead to adjudicate on the matter thereby trying to rob this Honourable Court of its jurisdiction. He pointed out that the Onojie's attention was drawn to this fact hence he instructed the 1st Defendant to go and withdraw the case from the court. He referred the Court to Exhibit A, page 7, 4th paragraph, lines 2 and 3.

Learned counsel emphasized that the refusal of the 1st Defendant to comply with the Onojie's instruction, is a pointer to the fact that he did not voluntarily submit to the arbitration and was not ready to accept the decision of the said arbitration. That this ought to have put a "full-stop" to the adjudication before the Onojie in deference to the jurisdiction of this Honourable Court. That in total disregard to the action in this Court, the Onojie went ahead to assume jurisdiction and gave judgment which prejudged the action before this Honourable Court.

He submitted that this Honourable Court should guard its jurisdiction jealously and any publication which prejudges an issue in pending proceedings ought to be forbidden if there is any risk that it may influence the tribunal whether judge, magistrate or jury or any of those who may be called upon to give evidence when the case comes up for hearing. He referred to the case of: ***Bello v. A. G., Lagos State [2007] 1 F.W.L.R. (PT. 347) Pg. 39.*** Again he referred to the English

case of: ***A. G. v. Times Newspapers Ltd (1973) 1 All ER @ 821, 822,*** where Lord Denning M.R. stated as follows:

> ***'We must not allow "trial by newspapers" or "trial by television" or trial by <u>any medium</u> other than the courts of law'.*** (underlined by counsel)

He also referred to the case of: ***Bello v. A. G., Lagos State (supra)*** @ pp.76; paras. A & B where ***Salami, JCA*** opined as follows:

> ***"...comments on pending legal proceedings which purports to prejudge the issues which are to be tried by the court are intrinsically objectionable as being usurpation of the proper function of the court…."***

Learned counsel urged the Court to expunge Exhibit A which tends to rob the Court of its jurisdiction to determine this case on its merit and submitted that the jurisdiction of the court is the power of the court and the court is enjoined to guard same jealously.

He submitted that the evidence led by the Claimants, is at variance with their pleadings. That the extant statement of claim of the Claimants is attached to a motion dated 29th June, 2018 and the additional joint reply to joint statement of defence dated 30th November, 2017. That the only thing that was pleaded by the Claimants in their further amended statement of claim dated 29th June, 2018 is the prayers claimed by the Claimants and nothing more and no facts were pleaded to prove these claims.

He submitted that parties are bound by their pleadings and are not expected to lead evidence outside what is pleaded. That when parties lead evidence outside their pleadings, such evidence will be at variance with the pleadings and where this is the case as in this instant case, such evidence becomes inadmissible and ought to be rejected by the court. He referred the Court to the cases of: ***Alahassan & Anor. v. Ishaku & Ors. (2016) 258 L.R.C.N. Pg. 73 @ 108JJ Ratio 2;*** and ***Eze v. Ene & Anor. (2017) 266 L.R.C.N. Pg. 32 @ 52U Ratio 2.***

He therefore urged the Court to discountenance the evidence of the Claimants and their witnesses as they go to no issue. Also he submitted that there is nothing like ***additional joint reply to joint statement of defence.*** That what is allowed in law is ***"amended reply to joint statement of defence".*** He therefore urged the Court to discountenance the said additional joint reply to joint statement of defence.

Finally he submitted that the Claimants have failed to prove their case and therefore not entitled to the reliefs claimed in their statement of claim as a person cannot put something on nothing and expect it to stand.

In his Written Address, the learned counsel for the Claimants, ***Chief S.M.Momoh*** identified two issues for determination as follows:

1. ***Whether from the totality of the evidence adduced by the claimants they have proved/Established ownership of the land in dispute.***
2. ***Whether the 1st – 5th Defendants are not trespassers.***

He thereafter argued the two issues seriatim.

<u>ISSUE 1:</u>

Whether from the totality of the evidence adduced by the claimants they have proved/Established ownership of the land in dispute

Arguing this issue, learned counsel submitted that the court in plethora of cases have

categorized five recognized ways of proving tittle to land. See the cases of: ***ORIANZI VS A.G. RIVERS STATE AND ORS 2017 Vol. 271 L.R.C.N. page 150 at page 162 Ratio 4; PADA v GALADIMA and ANOR 2017 Vol. 273 L.R.C.N. page 1 at page 6-7 Ratio 1; IDUNDUN AND ORS V OKUMAGBA (1996) 9 and 10 SC 277 at 246 – 250; and FALAYE AND ORS V DADA AND ORS (2016) VOL 262 LRCN Page 38 at Page 44 R3.***

Counsel submitted that from the totality of the evidence of the claimants they have established their title to the land in dispute. He posited that the claimants gave reliable, credible, unchallenged and uncontroverted evidence to show that the land belong to them.

He referred to the evidence of the 1st Claimant in his statement on oath dated 18th day of November, 2016 at paragraph 7 that Emu was founded by the following people namely; (1) Egua (2) Auma (3) Idumuogbe (4) Ugun (5) Idumuenima (6) Obo (7) Okpogho (8) Egben in Emunekhua and formed the earlest quarters in Emu land. Also in paragraph 19 of the 1st Claimant's statement on oath, he stated that the Okpogho community Emu granted land to Okede people to farm on Okpogho community and that the land is granted to them on presentation of one bundle of yams and a keg of palm wine from each applicant from Okede community.

Again, he referred to paragraph 14 of the 2nd Claimant's statement on oath where he stated thus: "that on the left hand side of Emunekhua after Okpogho playing ground (Ughe) the houses of Monday Itunu, Pa Aghenta Enamon, Chief Monday Ebalehita, Pa Ibizugbe where the Globacom mast is being erected and after that is the house of Mr. Sunday Omodiagbe whose father died in 1960 and was buried there by his son-Mr. Sunday Omodiagbe who thereafter built a modern house thereon in 1985 and Mr. Sunday Agboi and that on the right side Odile Okosun, Mr. Isobo Amuobanose, Mr. Arewe Ibizugbe, Pa Edo Omoorekhan, Professor Joseph Aghenta, Mr. Robinson Agboi, and then there is Ogoni house which is the late Pius Agboi of Okpogho Quarters, Emu gave a parcel of land to Ogboni Society to build Ogboni house".

That in paragraph 15 thereof, the 2nd Claimant stated that all the above mentioned persons are from Okpogho community and they have lived there for a period spanning 50 years to 100 years undisturbed and without permission from anybody until 2010 when the 5th defendant who is from Idumuose quarters Emu trespassed and brought Globacom company to erect a mast right in Okpogho land in dispute prompting the Okpogho community to report the issue of trespass to the Onogie of Emu.

He submitted that the above evidence is good, credible direct un-attacked and un-discredited and urged the Court to rely on it and referred the Court to the case of: ***N.S.I.T.F.M.B. V KLICO (NIG) LTD. 2010 vol 186 L.R.C.N. Page 1 at page 4 Ratio 5.***

Learned counsel submitted that when a person has been in occupation of a land for 12 years undisturbed, no action shall lie against him for the recovering of that land and referred to ***section 6(2) of the Limitation Law Cap 89 Laws of Bendel State of Nigeria, 1976 applicable in Edo State.*** See also, the case of: ***ASABOR & ANOR V P.O. OIL CORP (NIG.) LTD & ANOR (2017) VOL. 264 L.R.C.N. PAGE 34 at PAGE 44 RATIO 5 & 6.***

Submitting further, learned counsel referred the Court to paragraph 8 of the additional statement on oath of the 2nd claimant dated 27th of July 2017 where he stated that the 1st Defendant admitted at the palace of the Enogie of Emu that the Globacom mast was erected on Okpogho community land on 21st December, 2013 at page 7 of the proceedings.

That in the matter between MR. BROWN IRIAHRHEMHIEN plaintiff on behalf of OKPOGHO community, Emu and MR. ALFRED OSOBASE-defendant ID OISE Quarters Ibhiadan, Emu dated 17th March, 2010 and the Royal palace ruling dated 23-4-2010, the 1st Defendant was among those who decided that the land in dispute belonged to Okpogho community. He referred to Exhibit "E" and submitted that the evidence of the 2nd Claimant in his additional statement on oath dated 27th day of July, 2017, paragraphs 9, 14, 16, 17, 21, 22, 23, 24, 25, 26, 27, 29 and 30 were neither controverted or contradicted by the defendants.

Counsel submitted that the above pieces of evidence were not challenged or contradicted by the defendants and it is trite law that any piece of evidence which is not challenged or contradicted and is found credible is deemed to be acceptable. See the case of: ***ORIANZI VS A-G RIVERS STATE AND ORS (2017) SUPRA AT PAGE 163 RATIO 5.***

He urged the Court to resolve Issue 1 in favour of the Claimants.

ISSUE 2:

Whether the 1st – 5th Defendants are not trespassers to the claimant land.

Learned counsel submitted that the 1st – 5th Defendants are trespassers to the Claimants' land. That it is in evidence in paragraph 15 of the written statement on oath of the 1st Claimant dated 18 day of November, 2016 that Okpogho community have lived in the present land in dispute for a period spanning 50 years to 100 years undisturbed until sometime 2010 when the 5th Defendant trespassed and brought Globacom company to erect a mast. That the 1st Defendant on getting to know that the sum of N400,000 was paid to the 5th Defendant by Globacom for the land in dispute, he decided to join the 5th Defendant in the trespass on the disputed land.

That when the matter was pending at the palace of the Regent of Emu, the 5th defendant approached the 2nd Defendant to intervene and settle the matter out of the palace wherein the 2nd Defendant said that the land belonged to Okpogho community of Emu and refunded the sum of N10, 000 summon fees to Okpogho community. That the 2nd Defendant made a U-turn in his letter to Globacom dated 23/1/2013 where he stated that the land in dispute was jointly owned by Okede and Okpogho communities. See: Exhibit "B".

Learned counsel submitted that the 2nd Defendant's letter Exhibit "B" is in conflict with his earlier statement that the land in dispute belongs to Okpogho Community.

He posited that in one breath the defendants acknowledged that the land in dispute belong to Okpogho community and in another breath the 2nd Defendant claimed that the land is jointly owned by both communities. That in a suit filed by the 1st Defendant-Chief William Ehibhiator Isidahomen and Ords V Mr. Alfred Osobase (A.K.A Osobase & Another) see Suit No.

HCB/11/2013 Exhibit "C", where Okede community are claiming ownership of the land in dispute, the 2nd Defendant under cross examination stated that both community own the land in dispute by affinity.

Learned counsel referred the Court to ***Blacks Law Dictionary 10th Edition at page 70*** which defines Affinity as - (1) A close agreement, (2) The relation that one spouse has to the blood relatives of the other spouse: relationship by marriage

He submitted that from the foregoing, affinity is not one of the five ways of acquiring land enumerated in the plethora of authorities. He referred to the cases of: ***IDUNDU AND ORS V OKUMAGBA (1996) 9 AND 10SC 277 AT 146-250;and Falaye & Ors V Dada and Ors (2016) Vol. 262 LRCN page 38 at page 44R3.***

Counsel submitted that following the trespass by the Defendants, Okpogho community sued Okede community and Mrs. Janet Osobase 5th Defendant on 21/12/2013 at the Onogie's palace and same was decided in favour of the claimants (Okpogho Community) on the 18/1/2014 by the Royal palace of Onogie of Emu vide Exhibit "A".

That it is trite law that for a Claimant to succeed in a case of declaration of title to land, he must rely on the strength of his case and not on the weakness of the Defendant's case. He however submitted that the weakness of the Defendant's case can also strengthen the Claimants' case. That the evidence of the Defence is manifestly weak and unreliable as earlier submitted and this has further strengthened the Claimants' case. For this view, he relied on the case of: ***ANUKAM VS AUKAM (2008) VOL. 159 LRCN PAGE 33 AT PAGE 37 RATIO 4.***

He urged the Court to resolve Issue II in favour of the Claimants.

Referring to the arguments on traditional evidence in the final address of the Defendants dated 12th November, 2018 page 6 at paragraph 5 thereof, counsel submitted that the Defendants did not plead and did not lead any evidence on traditional title therefore they cannot address on it. He submitted that counsel's address, no matter how brilliant, cannot take the place of evidence. See the case of: ***ARO V ARO (2000) 14 WRN page 51 at page 55 Ratio 8***.

Again, he referred to the issue of customary arbitration at page 7, paragraphs 3 of the defendant's counsel's address and submitted that customary arbitration between the parties was not pleaded and no evidence was led on it. He again emphasised that counsel's address cannot take the place of evidence as in the instant case. See the case of: ***ARO V ARO (2000) supra***. He therefore urged the Court to discountenance it.

Responding to the submission that the evidence led by the Claimant's is at variance with their pleadings attached to a motion dated 29th June, 2018, counsel submitted that it is baseless and unfounded because the claimants had already led evidence on the said pleadings and therefore no further evidence was necessary. That the case relied on for the amendment of the said motion dated 29th June, 2018 is: ***EZE V. ENE & ANOR (2017) VOL. 266 L.R.C.N. Page 32 at page 38 Ratio 4***. Furthermore, he pointed out that the Defendant's counsel did not object to the motion when it was moved.

On the submission of defence counsel that there is nothing like ***additional joint reply to***

joint Statement of Defence and that what is allowed in law is ***"Amended Reply to Joint Statement of Defence"*** he submitted that the defence counsel did not cite any authority to back up his submission. He submitted that the above phrases are dependent on circumstances of a particular situation. He urged the Court to discountenance that argument as being a mere academic exercise more so, when it was not supported by any authority or statute.

Finally he submitted that from the totality of the evidence of the Claimants, they have proved their case on the preponderance of evidence and the balance of probability and therefore entitled to judgment as per their claims.

I have carefully considered all the processes filed in this suit, together with the evidence led, the exhibits admitted in the course of the hearing and the addresses of the respective Counsels to the parties.

Upon a careful examination of the Issues formulated by learned counsel for the parties, I am of the view that the sole issue for determination in this suit is: ***Whether the claimants have proved their title to the land in dispute on the balance of probabilities?***

I will now proceed to resolve the issue.

In a claim for a declaration of title to land, the burden is on the Claimants to satisfy the Court that they are entitled, on the evidence adduced by them, to the declaration which they seek. The Claimants must rely on the strength of their own case and not on the weakness of the defendant's case. See: ***Ojo vs. Azam (2001) 4 NWLR (Pt.702) 57 at 71; and Oyeneyin vs. Akinkugbe (2010) 4 NWLR (Pt.1184) 265 at 295.***

It is now settled law that there are five ways of proving ownership of land. These are as follows:

I. By traditional evidence;
II. By the production of documents of title;
III. By proving acts of ownership;
IV. 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; and
V. By acts of long possession and enjoyment of the land.

See: ***Idundun vs. Okumagba (1976) 9-10 S.C. 227;***

The point must be made that any one of the five means will be sufficient to prove title to the land as each is independent of the other. See: ***Nwosu vs. Udeaja (1990) 1 NWLR (Pt.125) 188; and Anabaronye & Ors. vs. Nwakaihe (1997) 1 NWLR (Pt.482) 374 at 385.***

In the instant suit, the learned counsel for the Claimants did not categorically state the means of proof they relied on. However from the evidence led, the Claimants appear to be relying on the first, third and the fifth means of proof. To wit: ***proof by traditional evidence; by acts of ownership; and by acts of long possession and enjoyment of the land.***

The Claimant's traditional evidence of title is that that the land in dispute was deforested by the Okpogho community's forefathers many years ago being one of the eight (8) earliest

settlers in Emu-land and that the others are Egua, Aumu, Idumuogbe, Idumuenema, Ugun, Obo and, Egben in Emunekhua. They maintain that Okede community was not one of the eight earliest settlers in Emu.

According to the Claimants, Okpogho community land is separate and distinct from Okede land and also separate and distinct from Idumu-Ose Ibhiadan Emu and that Okpogho community has common boundaries with Okede community on one side and Emunekhua on the other side. That Alutor shrine is within Okpogho community and is not the boundary between Okpogho community and Okede community.

They led evidence that when coming from River Utor and climbing the hill after Okede community to Okpogho community on the right side are one Iyogbon's house which is opposite Okpogho community. That Ughe and Okpogho community starts from one Odile's house, Arewe Ibizugbe, Ebosele Edo, Prof Aghenta whose house is directly opposite the disputed land where the mast is being erected and on the left hand side of Okpogho-Emunekha road are the houses of Monday Itumu, Pa. Aghenta Enamon, Chief Monday Ebalehita, Pa. Ibizugbe (late) where the mast is being erected, Monday Omodiagbe and then Sunday Agboi. According to them, all these people named above have lived in their various houses listed above for a period spanning between 50 years to 100 years undisturbed until 2010 when 5th Defendant who is from Idumuose Quarters Emu brought Globacom company to erect a mast on Okpogho community land without their permission.

The issue now is whether this evidence of traditional history is sufficient to establish the Claimants' title. It is settled law that a Claimant who claims title by traditional evidence and who successfully establishes his title by such evidence need not prove further acts of ownership. In the case of: ***USMAN v. KILANGE (2015) LPELR-40627(CA)*** the Court stated the position thus:
"In law, a party who by credible evidence makes out his case of title to land by means of evidence of traditional history of title is entitled on such proof alone to a declaration of title to the land in dispute. In other words, there is no further onus or duty on such a party, as in the instant case the Appellant to prove, in addition to his already proved traditional history of title to the land in dispute, any of the other four modes of proof of title to land. Simply put, proof of title to land in dispute by means of traditional history of title if made out is both conclusive and sufficient. See Aigbobahi V. Aifuwa (2006) All FWLR (Pt. 303) 202 @ p. 213. See also Oyekan V. Oyewole (2012) All FWLR (Pt.623) 1991 @ pp. 2001-2002."
Per GEORGEWILL, J.C.A (P. 44, paras. A-D)

However, a party seeking for a declaration of title to land that is relying on traditional history as proof of his root of title must plead certain facts.

In the case of: ***MICHAEL & ANOR v. ADULOJU (2018) LPELR-46312(CA)*** the Court of Appeal referred to the decision of the Supreme Court in the case of: ***CHUKWUEMEKA ANYAFULU & ORS V. MADUEGBUNA MEKA & ORS (2014) LPELR-22336(SC)*** where Okoro JSC stated as follows:

"It is trite that a party seeking for a declaration of title to land, who relies on traditional

history as proof of his root of title, must plead same sufficiently. That is to say, he must demonstrate in his pleading the original founder of the land, how he founded the land, the particulars of the intervening owners through whom he claims. Where a party has not given sufficient information in his pleadings as regards the origin or ownership of the land and the line of succession to himself, he has just laid foundation for the failure of his claim. See HYACINTH ANYANWU V. ROBERT ACHILIKE MBARA & ANOR (1992) 5 SCNJ. 90, IDUNDUN V. OKUMAGBA (1976) 9 - 10 SC 224, ATANDA V. AJANI (1989) 3 NWLR (Pt. III) 511."

This now brings us to the issue of examining the pleadings of the Claimants in this suit to ascertain whether their pleadings are comprehensive enough to cover the vital facts to support the admissibility of vital evidence to establish proof by traditional evidence.

The Claimants original Statement of Claim attached to the originating process is dated 4th of July, 2014, filed on the 8th of July. 2014. This was followed by the Additional Joint Reply to the Joint Statement of Defence dated 30th of November, 2017, filed on the 5th of December, 2017. The Claimants' last pleading is their Further Amended Statement of Claim dated 29th of June, 2018, filed on the 3rd of July, 2018.

In his address, the learned counsel for the Defendants made some adverse submissions on some alleged defects in the Claimants pleadings to wit: ***the Additional Joint Reply to the Joint Statement of Defence dated 30th of November, 2017, filed on the 5th of December, 2017;*** and ***their Further Amended Statement of Claim dated 29th of June, 2018, filed on the 3rd of July, 2018.***

Attacking the ***Additional Joint Reply to the Joint Statement of Defence dated 30th of November, 2017, filed on the 5th of December, 2017,*** the learned defence counsel contended that that there is nothing like ***additional joint reply to joint statement of defence.*** That what is allowed in law is ***"amended reply to joint statement of defence".*** He therefore urged the Court to discountenance the said additional joint reply to joint statement of defence. I agree with the learned counsel that under the Edo State High Court (Civil Procedure) Rules, 2018, there is no pleading like: ***additional joint reply to joint statement of defence.*** What is permissible under the rules is for the Claimant to file a reply to the Statement of Defence within 14 days from the service of the Statement of Defence on him. Of course where there are several claimants prosecuting the suit and several defendants who are jointly defending the suit, the Claimants' reply will be called a ***Joint Reply to the Joint Statement of Defence.*** If the Claimants effect any amendment to their ***Joint Reply to the Joint Statement of Defence*** such an amended reply will properly be termed an ***Amended Joint Reply to the Joint Statement of Defence*** and not an ***additional joint reply to joint statement of defence.***

Thus, it is evident that there is an error in nomenclature by the Claimants for naming their ***Amended Joint Reply*** as an Additional ***Joint Reply.*** The question therefore is: What is the effect of this error of nomenclature. On the effect of such non-compliance, ***Order 5, Rule 2 of the Edo State High Court Civil Procedure Rules, 2018*** provides as follows:

"Where at any stage in the course of or in connection with any proceedings, there has by reason of anything done or left undone, been a failure to comply with the requirements as to time, place, manner or form, the failure shall be treated as an irregularity and may not nullify such step taken in the proceedings. The Judge may give any direction as he thinks fit to regularise such steps."

In the case of: ***Ezea & Anor. Vs. Ugwuanyi & Ors. (2015) LPELR 40644 (CA) OREDOLA, J.C.A. at p.34, paras. B-C*** exposited thus:

"Admittedly, non- compliance with the rules of Court can either be curable or incurable. Non-compliance will be curable if it is intangible, marginal, peripheral and not affecting the core essence or merits of the matter."

See also the decided case of: ***Carribean Trading & Fidelity Corporation vs. N. N. P. C. (1992) 7 NWLR (Pt. 252) 161 at 183.***

I am of the view that the observed defect in nomenclature can be cured by the provisions of ***Order 5, Rule 2 of the Edo State High Court Civil Procedure Rules, 2018.*** The defect does not affect the merit of the suit.

Next is the challenge arising from the ***Further Amended Statement of Claim dated 29th of June, 2018, filed on the 3rd of July, 2018.*** According to the learned counsel for the Defendants, as a result of that last amendment, the evidence led by the Claimants is now at variance with their pleadings. He posited that the extant statement of claim of the Claimants is the one attached to the motion dated 29th June, 2018 and the additional joint reply to joint statement of defence dated 30th November, 2017. He pointed out that the only thing that was pleaded by the Claimants in their ***Further Amended Statement of Claim dated 29th June, 2018*** is the prayers claimed by the Claimants and nothing more. That no facts were pleaded to prove their claims. He submitted that parties are bound by their pleadings and are not expected to lead evidence outside what is pleaded. That when parties lead evidence outside their pleadings, such evidence will be at variance with the pleadings and where this is the case as in this instant case, such evidence becomes inadmissible and ought to be rejected by the court.

It is settled law that an amended pleading supersedes all the previous pleadings. In the case of: ***SEMBE & ORS v. PITTI (2016) LPELR-40822(CA), HUSSAINI, J.C.A at pp. 24-26, paras. E-B,*** explained the position thus:

"It has long been settled that once pleadings are amended, the amended document takes retrospective effect and it relates back to the date the original document was made or filed. See: Salami V. Oke (1987) NWLR (Pt. 63) 1 or (1987) 9 - 10 SC 43. Olamiran V. Adebayo (Supra). What stood before the amendment is no longer material before the Court and no longer defines the issues to be tried although the Court granting the order for amendment could make reference to the original document so far as it is in existence. What the Court cannot do is act on that original pleading."

Again in the case of: ***Agbahomovo V. Eduyegbe (1999) 2 SC 79, 91,*** the Supreme Court held thus***: "There can be no doubt that once pleadings are duly amended by the order of***

Court, what stood before amendment is no longer material before the Court and no longer defines the issues to be tried before the Court. See Warner v. Sampson (1959) 1 Q.B. 297. This, however, is as far as this proposition of law goes. It does not and has not laid down any such principle that an original pleadings which has been duly amended by an order of Court automatically ceases to exist for all purposes and must be deemed to have expunged or struck out of the proceedings. The clear principle of law established is that such original pleading which has been duly amended is no longer material before the Court in the sense that it no longer determines or defines the live issues to be tried before the Court, not that it no longer exist. It does certainly exist and is before the Court. It is however totally immaterial in the determination of the issues to be tried in the proceedings. It thus cannot be considered as the basis of one's case in any action. Nor can a Court of law rely on any such original pleading which has been duly amended as the basis for its Judgment in the suit. The issues to be tried will depend on the state of the final or amended pleadings."

In view of the foregoing authorities, I agree with the learned counsel for the Defendants that when the Claimants effected their last amendment to their Statement of Claim on the 19th of July, 2018, the extant statement of claim of the Claimants is now the ***Further Amended Statement of Claim dated 29th June, 2018*** and ***the Additional Joint Reply to Joint Statement of Defence dated 30th November, 2017.*** Curiously, the only thing that was pleaded by the Claimants in their ***Further Amended Statement of Claim dated 29th June, 2018*** is the prayers claimed by the Claimants and nothing more. They unwittingly jettisoned all the previous facts contained in the previous Statement of Claim. This was quite a delicate and dangerous approach to amendment of pleadings. The safer approach would have been to retain all the relevant paragraphs that need no amendments and to effect the necessary amendments on the paragraphs where the facts need to be altered. With this drastic approach, the Claimants are left with only the Reliefs contained in the ***Further Amended Statement of Claim dated 29th June, 2018*** and the facts pleaded in their ***Additional Joint Reply to Joint Statement of Defence dated 30th November, 2017.***

The issue therefore is whether these remaining pleadings can support the evidence to prove their title through evidence of traditional history of the land.

A viable Statement of Claim should plead sufficient facts to sustain the Reliefs claimed. It was clearly erroneous for the Claimants to have omitted such salient facts from their ***Further Amended Statement of Claim dated 29th June, 2018*** leaving only the reliefs. It is like attempting to drive a vehicle without the engine. By that crucial amendment the substratum was effectively removed from the Statement of Claim.

In the case of: ***OLUBODUN & ORS v. LAWAL & ANOR (2008) LPELR-2609(SC), MUKHTAR J.S.C at pp. 32-33, paras. A-B*** exposited thus:

"The statement of claim is supposed to contain the facts of the cause of the action of a party or parties which it relies on, and on which he wants the Court to intervene and give remedy on the wrong complained of. It must specifically contain the facts the party relies upon for the

determination of the suit that has been instituted."

Furthermore, the facts pleaded in the Reply are grossly insufficient to sustain the claims. It is settled law that it is not even in all cases that a Claimant is bound to file a Reply. As the Supreme Court put it in the case of: ***Alhaji Taofik Alao vs. A.C.B Ltd. (1998) LPELR-407(SC),*** where no counter claim is filed, further pleadings by way of Reply to a Statement of Defence is generally unnecessary if the sole purpose is to deny the averments contained in the Statement of Defence.

Going through the remaining pleadings of the Claimants, I did not see where they pleaded facts to demonstrate the original founder(s) of the land, how he founded the land and the particulars of intervening owners. Their pleadings appear frail and fragile. In ***paragraph 3*** of the ***Additional Joint Reply to Joint Statement of Defence dated 30th November, 2017*** they glibly stated inter alia that: ***"…the Claimants deny that Okede Community forefathers deforested the land in dispute…"*** . Again in ***paragraph 13*** thereof, they stated inter alia that: ***"…the Claimants contend that the land in dispute belongs to Okpogho Community and not Okede Community…"*** It is settled law that a party is bound by his pleadings however weak it may be.

Again in the case of: ***ASAOLU v. OJOTOLA (2015) LPELR-41794(CA), OWOADE, J.C.A at pp. 20-21, paras. D-A*** restated the position thus:

"… It is trite law that a party relying on evidence of traditional history must plead and prove his root of title. Not only that, he must show in his pleadings who those ancestors of his were and how they came to own and possess the land and eventually pass it to him, otherwise his claim will fail. Also, where a person traces the root of title to a person or family he must establish how that person or family also came to have title vested in him or it."

In the case of: ***LATEJU v. LUBCON NIGERIA LTD (2014) LPELR-22536(CA), ONYEMENAM ,J.C.A at pp. 17-18, para. C*** stated thus:

"Also fundamental to the grant of declaration of title to land or any other right for that matter, the Plaintiff is required by the law to satisfy the trial Court by his evidence that he is entitled to such a declaration. The discharge of the onus placed on the Plaintiff begins from his pleadings or averments on how his predecessors came in to ownership of the land and how it devolved to him before stretching out to the evidence of the Plaintiff in prove of his averments. Once the pleading of a Plaintiff is wanting on the history of ownership and its devolution, it becomes absolutely difficult for the Plaintiff to discharge the burden of proof satisfactorily. The diligence and meticulous nature of the Plaintiff's Pleadings in an action for declaration of title cannot be over emphasized in that, in discharging his onus of proof, the Plaintiff's action succeeds or fails solely on the strength of his case. The onus is so heavy on the Plaintiff in an action for a declaratory relief so much so that, he cannot succeed based on the - Weakness of the defence - The admission in the pleadings of the Defendant - Evasive averment such as "the defendant is not in a position to deny or admit paragraph...and will put the Plaintiff to the strictest proof thereof. "See: MOSES OKHUAROBO & 2 ORS V. CHIEF

EGHAREVBA AUGBE {2002) 9 NWLR (PT.771) 29; J ASON UMESIE & 5 ORS V. HYDE EKPENYONG ONUAGULUCHI & 7 ORS (1995) 9 NWLR (PT. 421).”

In the light of the foregoing authorities, I hold that the Claimants have not pleaded sufficient facts to sustain evidence to prove their root of title by traditional history. We will go further to examine the evidence adduced to prove their title by the other alternative means of proof to wit by ***acts of ownership; and by acts of long possession and enjoyment of the land.***

As we have already observed, arising from the drastic effect of the Claimants' amendment to their Statement of Claim, their pleadings have become quite frail and fragile. The only evidence that we can consider are evidence of facts which are covered by the surviving pleadings.

It is settled law that a Claimant relying on acts of ownership and possession of land as a root of title is expected to plead and establish in evidence, acts of possession or acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant the inference that he is the exclusive owner . See the following decisions on the point: ***Ekpo Vs Ita (1932)11 NLR 68, Idundun Vs Okumagba (1976) 9-10 SC 227, Piaro vs Tenalo (1976) 12 SC 31, Chiwendu Vs Mbamali (1980) 3-4 SC 32, Okafor Vs Idigo III (1984) 1 SCNLR 48t Fasoro Vs Beyioku (1988) 2 NWLR (Pt 76) 263***.

In the case of: ***Onwugbufor Vs Okoye (1995) 1 NWLR (Pt 424) 252, Iguh, JSC*** stated what was required of a person relying on acts of possession and ownership as a root of title at page 282 E-G thus:

"A party, as in the present case, who relies on acts of possession and ownership of the land in dispute as evidence of, and in proof of, his title to land must to succeed, establish that such acts not only extend over a sufficient length of time but also that they are numerous and positive enough to warrant the inference of exclusive ownership of such land. In effect, such a party must show:- (i) That from the overwhelming number of such acts over a sufficient length of time on the land in dispute, it is but safe and imperative to conclude that the party exercising such acts is the exclusive owner of the land. (ii) That from the nature of such acts nec vi, nec claim, nec precario exercised over a sufficient length of time as aforesaid, any person asserting a contrary title would have known of such exercise of rights and ought to have asserted his adverse title to the land. It must however be stressed in this connection that an isolated or a few of such acts which the adversary was not in a position to have known about may not suffice." In other words, to sustain a claim of title, the acts of possession or acts of ownership relied on by a claimant must satisfy three requirements, namely: (a) they must extend over a sufficient length of time; (b) they must be numerous; and (c) they must be positive, i.e., they must be visible and external."

Coming to the instant case it is pertinent at this stage to point out that the land in dispute as described by the Claimants is: ***a piece or parcel of land from the right side coming from***

River Utor and climbing the hill after Okede Community to Okpogho Community on the said right said from Odile Okusun's house, Mr. Isobo Amuobanose, Arewe Ibizugbe, Pa. Edo Omoarekhan, Prof. Joseph Aghenta whose house is directly opposite the disputed land, Mr. Robinson Agboi and on the left hand side of Okpogho-Emunekha Road is he house of Monday Itumu, Pa. Aghenta Enamo, Chief Monday Ebelehita, Pa. Ibizugbe (late) which is within 50 ft. by 50 ft where mast is being erected, Sunday Omodiagbe and then Sunday Aboi within the jurisdiction of this Honourable Court.

Essentially, the land in dispute is the parcel of land measuring 50feet by 50feet where Globacom Telecommunications Company is trying to erect a satellite mast. The issue at this stage is whether the Claimants have pleaded and led evidence to prove ***that their acts of possession or acts of ownership:(a) extend over a sufficient length of time; (b) are numerous; and (c) positive enough, i.e., that they are visible and external.***

In an attempt to prove their acts of possession, the Claimants led evidence of an alleged customary arbitration over the disputed land by the palace of the Onogie of Emu. They even tendered the judgment of the customary arbitration as Exhibit A. The Defendants have vehemently opposed the verdict of the palace.

It is settled law that any party relying on the existence of a prior resolution of a matter in dispute by the existence of a binding customary arbitration, must plead and prove at the trial of the action in which the said prior customary arbitration is relied on as "estoppel", the following: - (a) that parties involved voluntarily submitted the 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 decisions so pronounced. See the following decisions on the point: ***ECHEFU & ORS v. EMENIKE & ANOR (2018) LPELR-43682(CA), Raphael Agu v. Christian Ozurumba Ikewibe (1991) 3 NWLR (Pt.180) 385 Assampong v. Amuaku (1932) 1 WACA 192. Ofomata v. Anoka (1974) 4 E.C.S.L.R. 251.***

In the case of: ***ECHEFU & ORS v. EMENIKE & ANOR (2018) supra, LOKULO-SODIPE, J.C.A*** explained the rationale for these decisions thus:

"These principles are based on the fact that under Section 6 of the Constitution of the Federal Republic of Nigeria, 1979, it is to courts and not to non-judicial bodies that judicial powers of the Federal Republic of Nigeria are vested. So, the Courts take the view that it is open to the parties to choose whether to follow the normal channel for determination of controversy through the machinery of the Courts or to submit the matter voluntarily to the non-judicial body for a decision. If they chose the former, the decision of a Court of competent jurisdiction on such a matter would constitute an estoppel per rem judicatam. Where they chose the latter and there was an intervention by a non-judicial body, then the Court ought to be satisfied that a number of conditions precedent were satisfied before it could hold that the decision constitutes estoppel."

In the instant case, it is evident that the Defendants did not submit themselves fully to the customary arbitration. They abandoned the arbitration midway. This was a clear demonstration of their unwillingness to accept the decision of the arbitration. They even refused to withdraw the suit from court despite the instruction given to them by the palace. I agree with the learned counsel for the Defendants that having rejected the customary arbitration, the said judgment of the customary arbitration cannot be binding on them. I agree with the learned counsel that the proceedings at the customary arbitration were quite prejudicial to the suit in this Court.

The directive of the authorities of the palace of the Onojie of Emu for the Claimants to withdraw their suit from the Court and their action of proceeding with the customary arbitration to judgment when the Claimants refused to withdraw their suit was tantamount to a naked usurpation of the powers of the Court as enshrined in section 6 of the 1999 Constitution as amended. When the Emu palace proceeded with their arbitration to judgment, the Claimants should have taken the appropriate steps to invoke the supervisory jurisdiction and powers of the High Court to stop the arbitration by the prerogative order of Prohibition or to quash the arbitration judgment by the prerogative order of Certiorari. Courts are enjoined to jealously guard their jurisdiction to hear and determine a case to its finality.

In the case of: ***ADEOGUN & ORS v. FASHOGBON & ORS (2008) LPELR-131(SC), TABAI, J.S.C at pp. 24-26, paras. D-C*** opined thus:

"...once a person who is aggrieved or injured by the action of another comes to Court to seek redress, the Court must jealously guard its jurisdiction to hear and determine the case to its finality. It cannot surrender and subject its jurisdiction to the dictates and manipulations of the defendant… It is in this vein that Courts must insist, wherever possible, on the rigid adherence to the Constitution of the land and curb the tendency of those who would like to establish what virtually are kangaroo Courts under different guises and smoke-screens of judicial regularity. Thus, the Courts in the discharge of their appointed duties must sternly endeavour to resist... it is not permissible to remove judicial functions from the Courts and confer them upon a non-judicial body..."

In the old case of: ***DR. O.G. Sofekun v. Chief N.O.A. Akinyemi & Ors. (1980) 5-7 SC. I at 18-19; (1980) 5-7 SC. (Reprint)***, ***Aniagolu JSC*** exposited thus:

"It is essential in a Constitutional democracy such as we have in our country, that for the protection of the rights of citizens, for the guarantee of the rule of law which includes according fair trial to the citizen under procedural regularity, and, for checking arbitrary use of power by the Executive or its agencies, the power and jurisdiction of the Courts under the Constitution must not only be kept intact and unfettered but also must not be nibbled at. To permit any interference with or usurpation of the authority of the Courts as aforesaid, is to strike at the bulwark which the Constitution gives and guarantees to the citizen, of fairness to him against all arbitrariness and oppression."

From the totality of the evidence adduced by the Claimants, I am of the view that they have been unable to lead sufficient credible evidence to prove any viable acts of possession or ownership which are numerous and visible enough extending over a sufficient length of time to establish their root of title.

On the whole, I hold that the Claimants have failed to prove their root of title to the land in dispute. ***The sole issue for determination is therefore resolved in favour of the Defendants. The Claim is dismissed with costs assessed at N50, 000.00 (fifty thousand naira) in favour of the Defendants.***

P.A.AKHIHIERO
JUDGE
28/01/2020

COUNSELS:

Chief S.M.Momoh……Claimants.

Dr. Bola Adekanle...……Defendants.