***IN THE HIGH COURT OF JUSTICE***
***OF EDO STATE OF NIGERIA***
***IN THE UROMI JUDICIAL DIVISION***
***HOLDEN AT BENIN CITY***
***BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,***
***ON TUESDAY THE***
***27TH DAY OF JULY, 2021.***

***SUIT NO HCU/2/2016***

***MR. PATRICK EHIAGUINA EICHIE ………………………………….……CLAIMANT***
***AND***
***MR. SATURDAY IYOHA…………………………………………...DEFENDANT***

***JUDGMENT***

The Claimants instituted this suit *vide* a Writ of Summons and Statement of Claim dated the 14th of January, 2016, seeking the following reliefs:

***(a) A declaration that the claimant is entitled to Statutory Right of Occupancy in the land measuring 100ft by 208ft situate and lying between Messrs R.O. Eichie and E. Eriakha of Eriakha Avenue now General Hospital Road bounded Northward by Late Chief A.O. Ayewoh, Southward by Eriakha Avenue now General Hospital Road, Eastward by Mr. Imoibisa and Eastward by Mr. John Okokere a retired principal. The said land will be described in a litigation survey plan to be filed later.***
***(b) An order of perpetual injunction restraining the defendant, either by himself, his agents, privies and / or workmen and whosoever from further trespass on the Claimant's land.***
***(c) The sum of N5, 000,000 (Five Million Naira) as damages for trespass, N5, 000,000 (Five Million Naira) as general damages and N500, 000.00 (Five Hundred Thousand Naira) as cost of this action.***
***(d) Any other Order(s) this Honourable Court may deem fit to make in the circumstance.***

In proof of his case the Claimant called one witness, Mr Gabriel Okpebholo, whose father allegedly sold the land to him and tendered Exhibits A, B and C.

The Claimant's case is that he is the absolute owner and in possession of the disputed parcel of land measuring 100ft by 208ft which he purchased sometime in July, 1967 from one Mr F.O. Omonfoma for the sum of forty-three pounds as evidenced in writing by a deed of Transfer/ Agreement which was tendered in evidence as a receipt at the trial and admitted as Exhibit A.

The Claimant alleged that he has being on the land since 1967 and in exercise of his physical possession and to serve as constructive notice to trespassers, he erected a sign post bearing the message: "This Land belongs to P.E. Eichie" after purchasing the land. He said that the sign post was later removed by the defendant.

He said that on the 11th of January, 2016 he went to the land with some labourers with the intention of erecting a perimeter fence around the land but the defendant and his agent met the Claimant's labourers who were being supervised by one Engr. Christopher Oyo on the land, stopped them from working and drove them out of the land claiming the land belonged to him.

The Claimant said that he then went to the land to meet the Defendant and informed him that the land belongs to him and that he bought the land from Mr F.O. Omonfoma in 1967 but while they were still discussing, the Defendant brought in police officers who arrested him and took him to Uromi Police Station.

At the police station, the Claimant allegedly produced the document with which he purchased the land in dispute and the police officers advised the parties to approach a court of competent jurisdiction to determine the land dispute. He said that the following day the Defendant brought thugs to the land and drove himself and his labourers away from the land and started to build on the land with his thugs guarding his workers.

The Claimant said that as a result of the Defendant's destruction of his sign post, continued trespass, illegal and unlawful arrest and threat of violence he has suffered some damage.

On his part, the Defendant called two witnesses and tendered a purchase receipt and a document allegedly issued from the Onojie of Uromi's palace.

In his evidence, the Defendant stated that he is the absolute owner and the person in possession of the land in dispute which he said is measuring approximately 96ft x 185ft x 39ft lying, situate and being along Eriakha Street, off General Hospital Road, Ikekiala Quarters, Eguare, Uromi. He said that the land in dispute is bounded at the front by an access road known as Eriakha Street, on the right hand side by one Mr Okekhere's land, on the left hand side by Hon. Anslem Adima's house and at the back by Hon. Anslem Adima's fence.

The Defendant stated that he purchased the land from one Mr Ehigwina Odianosen for the sum of One Million, Eight Hundred Thousand Naira (N1, 800,000.00) on the 16th day of February, 2015 and that the sale was further reduced into writing in a "Deed of Transfer". He said that he did not meet any sign post on the land before he purchased it and he carried out extensive investigation to verify the rightful owner. That his search took him to the Elders of Ikekiala Quarters, Eguare, Uromi, the Elders of the seven communities overseeing the affairs of the sister villages (Egbele ni hion) and also to the palace of the Onojie of Uromi.

According to him, all the Elders confirmed that the land belongs to Mr Ehigwina Odianosen who is the Chief Priest (Oyanbholo of Ikekiala Quarters, Eguare, Uromi) by inheritance. He said that the Onojie of Uromi Kingdom, HRM Zaiki Edojojie II (JP) also confirmed that the land belongs to Mr. Ehiagwina Odianosen and issued him a document of ***"land sales consent"*** in respect of the land.

The Defendant alleged that the Onojie in further confirming the title of Mr. Ehiagwina Odianosen informed him that his great, great, grandfather ceded the land as a gift to one late

Pa. Ebhabha a renowned native doctor who was the great, great grandfather of Mr. Ehiagwina Odianosen.

The Defendant informed the Court that after purchasing the land, the said by Mr. Ehiagwina Odianosen immediately put him in physical and undisturbed possession of the land. He maintained that he did not meet any sign post on the land neither did he remove any. He alleged that he deposited some trips of sand on the land on the 27th day of February, 2015 immediately after being let into possession of the land and not on the 12th day of January, 2016 as alleged by the Claimant.

Upon the close of evidence, the learned counsel for both parties filed their final written addresses which they adopted as their final arguments.

In his written address, the learned counsel for the Defendant ***J.E.Enaholo Esq***. formulated a sole issue for determination as follows:

***WHETHER THE CLAIMANT HAS SUCCINCTLY PROVED HIS ROOT OF TITLE AS REQUIRED BY LAW TO WARRANT THE JUDGMENT OF THIS HONOURABLE COURT IN HIS FAVOUR?***

Arguing the sole issue, the learned counsel submitted that the Claimant has failed to prove his claim for a declaration, perpetual injunction and general damages on the preponderance of evidence and the balance of probability as required by law. He cited the case of: ***THOMAS NRUAMAH & ORS VS REUBEN EBUZOEME & ORS (2013) VOL 221 LRCN PT1, PG. 221 AT PG. 225 R.2.***

He submitted that for a Claimant to succeed in a case of title to land, he must prove his case on the preponderance of credible and convincing evidence which must be strong enough to support his pleadings. See ***ABIDE V YARO (2002) FWLR (PT 115) 793 AT 796- 797 RATIO 5 & 6*** and ***SECTION 134 OF Evidence Act, 2011***.

He submitted that the Claimant must rely on the strength of his case and not on the weakness of the defence except where the weakness of the Defence tend to support and/or strengthen the Claimant's case or where the Defendant's case manifestly supports the Claimant's case. In support of his submission, he cited the following cases: ***FASORO V BEYIOKU (1988) 2 NWLR (PT 76) 263, OKOLIE V ONYUDUWA (2000) I WRN 89, ADEWUYI V ODUME (2000) 14 MWLR (PT 945) 473 AND EYO ONUOHA & ANOR (2011) VOL 195 LRCN, PG. 38 AT PG. 44 RATIO 2.***

Furthermore, he submitted that the Claimant has failed to adduce credible and compelling evidence before this Court to prove his title against the Defendant and urged the Court to discountenance his evidence.

He said that the Claimant listed four witnesses including himself to be called and relied on in the course of hearing while further listing additional two witnesses and the Divisional Police Officer, Uromi Police Station to be subpoenaed but which he abandoned and refused to

call them, while relying on his evidence and a sole witness, one Mr Gabriel Okpebholo who he never listed as one of his witnesses in his frontloaded processes before the Court.

He posited that the Defendant in defence of the claim, frontloaded his statement of defence, listed four witnesses to be called including himself and also frontloaded and listed two documents i.e. Deed of transfer and the Onojie of Uromi land Sales Consent.

He emphasised that it is trite law that for a Claimant to succeed in a claim for declaration of title, he must lead cogent, strong and credible evidence which is capable of being weighed, tested and accepted by the trial Court and which evidence must be devoid of any contradiction and must not be controverted in any form whatsoever. See: ***EYO V ONUOHA (SUPRA) AT PG 44 RATIO 1.***

Counsel submitted that a Claimant for a declaration for a Statutory Right of Occupancy must prove one out of the five required methods of establishing ownership/title to land to enable the Court grant a Statutory Right of Occupancy. See: ***NRUAMAH & ORS VS REUBEN EBUZOEME & ORS (SUPRA) AT PG. 224-225 RATIO 1, AYANWALE VS ODUSAMI (2012) VOL 204 LRCN PG. 198 AT PG. 203-204 RATIO 4 and MATTHEW O. KUMAPAYI VS JOSEPH O. SOLUGE (2013) 32 WRN PG. 173 AT PG. 175-176 RATIO*** 1.

He listed the five methods of proof as follows:

***i.*** ***By traditional evidence***

***ii.*** ***By production of document(s) of title which are duly authenticated***

***iii.*** ***By act of selling, leasing, renting out all or part of the land or farming on it or on a part of it***

***iv.*** ***By act of long possession and enjoyment of the land and***

***v.*** ***By proof of possession of connected or an adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.*** See: ***UDENZE VS NWOSU (2008) 154 LRCN PG. 110 AT PG. 121 RATIO 15.***

He submitted that it is the Claimant's evidence that he acquired title to the land in dispute through purchase from one F.O. Omonfoma in the year, 1967 and that he has since then been in possession physically and also authorizing one Mrs Victoria Akin who according to him have been farming on the land for the past 30 years prior to the acquisition of title or alleged trespass by the Defendant.

He pointed out that in his statement on Oath, in one breath, the Claimant alleged that he acquired title on the 1st day of July, 1967 as contained in his paragraphs 7 of his statement of Defence while in another breath the Claimant stated in paragraph 8 of his written deposition in his reply to statement of Defence attached to this Statement of claim that he acquired title to the same land in the year, 1987. He submitted that there is a material difference between July,

1967 and 1987 which amounts to self-contradiction as to the date of purchase. He therefore urged the Court to resolve the contradiction in favour of the Defendant.

He posited that the Claimant during cross-examination stated that he does not know how F.O. Omonfoma got this land and where F.O. Omonfoma hails from. That he also informed the Court that Felix Okpebholo is the eldest son of late F.O. Omonfoma and not Mr. Gabriel Okpebholo who testified for the Claimant at the trial.

He said that the Claimant under cross-examination also stated that he does not know who deforested the land in dispute and he does not also know if Messrs Francis Obiyan Enaholo and Anslem Adima later purchased their various portions of land from late Pa. Aluegbeifoh Ehiagwina the DW1's father whose great, great grandfather deforested the land and the adjoining land about the year, 1964 and from whom the Defendant allegedly derived his title.

The Claimant also denied knowledge of the series of litigations between Mr. Felix Okpebholo and Odianosen Ehiagwina from the seven sisters' community level of Okpujie, Oyomon, Ikekiala, Ualor-Okpere, Odiguele, Okhieranlen and Uwalor-Usogho and before the Onojie-in-Council which judgments were in favour of Odianosen Ehiagwina before he sold and transferred to the Defendant.

He posited that in his attempt to prove title, acts of long possession and usage, the Claimant frontloaded and listed the witnesses he was going to call and rely on which names are himself, XXX, YYY and ZZZ in his list dated the 14th day of January, 2015 while the list of additional witnesses as frontloaded on the 31st day of March, 2016 includes Mr. Felix Okpebholo being the eldest surviving son of late F.O. Omonfomah Okpebholo from whom the Claimant derived title and Mrs. Victoria Akin who the Claimant alleged farmed on the land in dispute on his authority for a period of 30 years. He said that the failure to call them is fatal to the claim of the Claimant and an abuse of ***Section 147(d) of the Evidence Act, 2011***.

He further submitted that the Court cannot look at or rely on the un-adopted although frontloaded evidence of both Mr. Felix Okpebholo and Mrs. Victoria Akin and/or speculate on the uncross-examined evidence of both of them who were not called by the Claimant who had the opportunity of calling them and the Divisional Police Officer or the Crime Diary. See ***OMOTOSHO VS OJO (2008) 42 WRN 181, HABIB BANK (NIG) LTD VS KOYA (1992) 7 NWLR (PT 251) 43 AND OJO VS GHARORO (2006) 10 NWLOR (PT 987) 173.***

He submitted that where any fact is specially within the knowledge of any person, the burden of proof of that fact is upon that person, see ***Section 140 of Evidence Act, 2011***.

He said that the Claimant in his failed attempt to prove his title tendered the deed of transfer between F.O. Omonfoma and one Francis Obiyan Enaholo as Exhibit "C" and a jotter containing the profile of the Onogie of Uromi Kingdom admitted as Exhibit "B". He submitted that both exhibit "B and C" have no bearing on the case.

He said that the Claimant also during cross-examination informed the Court that the land belongs to his son, Barrister Paulinus Eichie, who was not made a party to the suit nor called as a witness, which piece of evidence is inconsistent with his pleading and statement on

oath. See ***EYO V ONUOHA & ANOR (2011) VOL 195 LRCN 38 AT PG. 44 PARAGRAPH 1.***

Counsel submitted that the Defendant in his defence listed three witness to wit: - Odianosen Ehiagwina, Peter Okhueleigbe Oleabhiele and Sundayh Imiefoh (deceased).

He said that the Defendant through the DW1, i.e. Odianosen Ehiagwina whose great, great, grandfather deforested the land as far back as sometime in the 1864 chronologically and succinctly gave the history from the first settler in Ikekiala i.e Pa Ebhabha to whom the then Onogie ceded the virgin forest, down to his own father, late Pa. Aluegbeotor Ehiagwina from whom he inherited the land after performing his final burial ceremony. He said that this piece of evidence was not challenged in any way either by way of reply to statement of defence or through cross-examination. See ***IROAGBARA VS UROMADU (2009) VOL 174 LRCN 61 PAGE 65 PARAGRAPH 5.***

He said that the DW1 also informed the Court of the farming and hunting activities carried out by his fore fathers which evidence was strongly collaborated by the adopted evidence on oath of Mr. Peter Okhueliegbe Oleabhiele and which evidence was neither challenged nor debunked during cross-examination.

He submitted that where a party who has the opportunity to challenge a fact relied upon by his adversary failed to challenge such fact, the trial Court can validly hold that such fact has been established before him. See ***DIKE VS NWANKWOR (1997) 3 NWLR (PT 495) 574 and MAINAGBA V GWANNA (1997) 11 NWLR (PT 528) 191 206***.

Counsel posited that the DW1 also gave evidence that after performing his late father's final burial, he inherited all his father's properties including this land in dispute after litigating on it with Mr. Felix Okpebholo, the eldest son of F.O. Omonfoma from whom the Claimant purportedly derived title over this land and how the seven sisters' communities of Oyomon, Okhieranlen, Uwalor-Usogho, Odiguele, Okpujie, Ualor-Okpere and Ikekiala were in his favour. That Mr. Felix Okpebholo appealed against the judgment to the Onogie-in-Council and the Onogie-in-Council also decided in his favour before he sold the land to the Defendant. He said that this piece of evidence was not challenged by the Claimant and the Court should act on it. See ***F.M.R LTD V EKPO (2004) 2 NWLR (PT 856) 100, 108.***

Again, he posited that the Defendant led unchallenged evidence that prior to his purchasing the land, he embarked on a title search to verify the rightful owner and that he met some elders of the seven sisters' communities such as Elder Ekpoken, Pa. Ayewoh, Pa. Omonua and a host of others. That he also went to the Onogie's Palace, where after confirmation, the Onogie of Uromi issued him Exhibit "D" the Onogie's land sales consent which then enabled him in conjunction with other information to proceed to negotiate with the DW1 who was confirmed to be the rightful owner for a purchase sum of N1, 800,000.00 (One Million, Eight Hundred Thousand Naira) as evidenced in exhibit "E" dated the 16th day of February, 2015.

He submitted that if at all the Claimant was ever in any possession, it is settled upon the plethora of the Defendant's evidence that the Claimant was in illegal and wrongful possession and no matter how long a person who is not the rightful owner may be in possession such possession cannot ripen or mature to legal ownership against the rightful owner.

He urged the Court to hold that the Claimant has failed to prove his title to the land on the preponderance of evidence and to accept the evidence of the Defendant and his witnesses in terms of its probative value as it out-weighed that of the Claimant and his sole witness. See ***MOGAJI V ODOFIN (1978) 4 S.C. 91 & CIROMA V ALI (1999) 2 NWLR (PT 590) 317***.

In his final written address, the learned counsel for the Claimant, ***O.M.Eboigbe Esq.*** adopted the Defendant's sole issue for determination and articulated his arguments it.

Opening his arguments on the sole issue for determination, the learned counsel submitted that the Claimant in proof of his case, tendered exhibits A, B and C, and called one witness, Mr. Gabriel Okpebholo, whose father sold the land to him.

He submitted further that facts admitted need no further proof. That in this suit, it is not in dispute as to whether the claimant and the defendant bought any land. That what is in dispute is as between the Claimant's vendor and the Defendant's vendor, which of them has a better title to transfer?

He submitted that the five ways to prove ownership of land are as follows:

i. By traditional evidence

ii. By documents of title

iii. By various acts of ownership

iv. By acts lawful enjoyment and possession of the land.

v. And by proof of possession of adjacent land in circumstances which render it probable that the owner of such land would in addition be the owner of the land in dispute.

On this view, he cited the following cases: ***Idudun V Okunmagba(1976)9-10SC 277SC, Atanda V Ajani (1989) 3 NWLR (part 111) @ page 511: Chief Atolos N V. Felix Ehinda(2009) MJSC Vol. 4 pt. 1 page 120 @ 144.***

Counsel submitted that it is trite law that a Claimant need not prove all the five ways enumerated above, that proof of one of the methods is sufficient proof of ownership. See: ***Asebieko V Morakinya (2016) LPELR-40865 (CA) at page 39. In Ajagbe V. Oyekola & Anor(2013) LPELR 19840 (CA) at page 78***.

He submitted that the Claimant in paragraph 4 of his written deposition on oath, deposed as follows:

***"I am the absolute owner and in possession of a parcel of land measuring 100ft by 208ft situate and lying between Messrs R.O.Eichie and E.Eriaka Avenue now general Hospital Road bounded Northward by late Chief A.O.Ayewoh, Southward by Eriaka Avenue now General Hospital Road, Eastward by Mr. Imobisa and Eastward by Mr. John Okokere a retired principal…"***

That he further deposed in paragraph 3 of his reply to Defendant's Statement of Defence as follows:

***"Mr. John Okehere, Mr. Osodan Imobisan who sold his portion to Kemi Okosun that sold to Hon. Frank okiye who later sold to Hon. Anslem Adima that now built on his plot, these boundary men acquired their title from the same vendor through which the claimant acquired the land in dispute i.e from late F.O.Omofuma Okpebholo and Mr. Ehiaguina Odianosen has no title to transfer to the defendant"***

He submitted that the Defendant corroborated the boundary men in paragraph 4 of his written deposition when he deposed as follows:

***"That the land now in dispute shares common boundaries with the land and features of the following front side an access road, known as Eriakha Street, right hand side, Mr. Okekhere's land, left hand side, Hon. Anslem Adima house at the back side, hon. Anslem Adima's fence"***

Counsel posited that both parties are *ad idem* on the identity of the land and the boundary men.

He posited that while corroborating the Claimant's claim, the DW1 under cross examination told the court that it is not his grandfather, his father or himself that sold land to the boundary men. He said that in paragraph 5 of his deposition, the C.W 1 deposed as follows:

***"Apart from the claimant, my late father also sold land to the boundary men to the claimant mentioned above and other persons, Mr. Ehiaguina Odinosen (vendor to defendant) does not have land in the land now in dispute."***

He submitted that the above piece of evidence that the Claimant's vendor also sold land to the Claimant's boundary men, were not controverted or denied. That it is trite law that evidence that ought to be denied and is not is deemed to be true and he cited the case ***of Gov. of Zamfara State V. Gyalange (2013)8NWLR (pt 1357) @ pg 462, particularly @469 R 13***.

He submitted that the admission of DW 1, the Defendant's vendor, under cross examination that he knows Francis Obiyan Enaholo and that he shares common boundary with Okehere and his further admission that he, his father or his grandfather did not sell land to the boundary men, is enough proof that the Defendant's vendor does not have any land in the land now in dispute.

Furthermore, he submitted that the question here is: if the Defendant's vendor's grandfather deforested the land and they own the land as alleged by D.W1, how come the

Claimant's vendor sold the lands to the boundary men of the land now in dispute, without being challenged by the DW1's grandfather or father in their life time?

He submitted that the unchallenged evidence of the C.W1 that his father owns the land and sold to the boundary men of the land now in dispute, is more probable and a proof that the Claimant's vendor owns the adjacent lands and the land now in dispute and he urged the Court to so hold.

Counsel submitted that one of the ways to prove ownership of land is by proof of possession of adjacent land in circumstances which renders it probable that the owner of such land would in addition be the owner of the land in dispute. He said that the claimant has proved that his vendor also sold to his boundary men. That he has discharged the burden to prove that his vendor has a better title to transfer than the Defendant's vendor and he urged the Court to so hold.

He submitted that a Claimant must succeed on the strength of his own case, and not on the weakness of the defence, unless it strengthens his own case. See: ***Otunba Abdul lateef Owoyemi V Prince Yinusa Oladele 7 ors (2003) NSCQR Vol. 16 at page 418: Odife v Aniemeka (1992) 8NWLR (pt.25)25.***

Learned counsel posited that the Claimant's case is that he bought the land from F.O.Omofuma as evidenced in the purchase document Exhibit A. That the C.W1 In his evidence told the Court that he witnessed the sale, when his father sold in 1967. That his father who sold to the claimant is the owner of the land and he also sold to the boundary men which evidence was not controverted.

He submitted that from the evidence of the C.W1, it was revealed that his father the vendor of the Claimant owns the adjacent lands. That the evidence of the C.W 1 is fortified by the evidence of D.W1 under cross examination when he stated thus:

***"Francis share common boundary with Okokhere (claimant's boundary man) and that: "I was not the one that sold to them" "my grandfather was alive when the palm was sold to Okohere" "my father or my grandfather did not sell land to Enaholo"***

He posited that the Defendant's vendor admitted that his grandfather was alive when the palm plantation was sold and his grandfather did not challenge the sale.

Counsel submitted that another question crying for an answer is whether DW 1(Defendant's vendor) a grandson can have a better title than his father and grandfather? That if the answer to this question is in the negative, the Court should hold that the Defendant's vendor's father and grandfather did not challenge the claimant's vendor sales when they were alive, because they knew that the land belongs to the Claimant's vendor.

Counsel urged the Court to hold that the Claimant has proved his case on the balance of probability as required by law. That proof in a civil case is not beyond reasonable doubt, but on the balance of probability or preponderance of evidence.

On the issue raised by the Defendant's counsel that the Claimant did not call all his witnesses, he submitted that it is trite law that a Claimant need not call all his witnesses. That he is only entitled to call witnesses that can sufficiently support his case as the Claimant did in this case. He urged the Court to discountenance the Defendant's counsel's address on this point.

On the issue that the boundary men re-purchased from the D.W 1, counsel submitted that it is trite law that he who asserts must prove. He posited that the Defendant could have called the boundary men to ascertain that fact or tender the re-purchase document between the DW1 and the boundary men. He submitted that the mere allegation of the D.W1 is an afterthought and cannot be proof that the boundary men re-purchased the land.

On the issue of the Claimant stating under cross examination that the land belongs to Barrister Paulinus Eichie his son, counsel submitted that the Claimant said that he gave the land to his son and so there is no contradiction at all.

On the issues of the discrepancies on the date of purchase, he submitted that it is not every discrepancy that affects the justices of a case, that the Court is concerned with substantial justice and not justice by technicality.

He further submitted that oral evidence cannot vitiate a written document. That Exhibit A is the purchase receipt of the land and the typographical error of 1987 in paragraph 8 of the Claimant's written deposition is not fatal to this case. He said that the Court should look at the purchase receipt to determine the date of purchase.

Counsel submitted that paragraphs 6,8,9,10,11,12,13,1415,19,21,22 and 23 of the D.W1's written deposition should be expunged because such facts were not pleaded and it is trite law that evidence of facts not pleaded goes to no issue.

In conclusion, learned counsel urged the Court to hold that the Claimant has proved his case on the balance of probability and that the evidence of the Defendant supports the Claimant's case and the Claimant can rely on it.

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 sole issue for determination adopted by the learned counsel for the parties, I observed that the Defendant did not file any Counter-Claim in this suit so I am in agreement that the sole issue as identified by the learned counsel will suffice to determine this suit. For the avoidance of doubt, the sole issue for determination is as follows:

***WHETHER THE CLAIMANT HAS SUCCINCTLY PROVED HIS ROOT OF TITLE AS REQUIRED BY LAW TO WARRANT THE JUDGMENT OF THIS HONOURABLE COURT IN HIS FAVOUR?***

I will now proceed to resolve the sole issue.

In a claim for a declaration of title to land, the burden is on the Claimant to satisfy the Court that he is are entitled, on the evidence adduced by him, to the declaration which he seeks. The Claimant must rely on the strength of his 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 Claimant did not specifically state the particular methods of proof that he is relying on but from the evidence led, it is apparent that the Claimant is not relying on the first method of proof by traditional evidence of the history of the land. In the evidence which he adduced at the trial he did not lead any cogent evidence to trace the traditional history of the land from the time of the deforestation of the land to when he allegedly acquired title to same.

As a matter of fact, under cross examination, the Claimant stated thus: ***"I acquired the land in dispute from one F.O. Omofomah now late. I do not know how late Omofomah derived his title to the land. I do not know where Omofomah comes from. The eldest son of Omofomah is Felix Okpebhole aka Felolo. I do not know one Odianose Ehiagwina."***

From the evidence adduced at the trial, the Claimant appears to be relying on the second, third, fourth and the fifth means of proof. To wit: proof by the production of documents of title; by acts of ownership; possession of connected or adjacent land; and by acts of long possession and enjoyment of the land. I will consider each method of proof seriatim.

On proof by the production of documents of title, it is settled law that one of the recognized methods of proving title to land is by the production of valid and authentic documents of title. See the classical case of ***Idundun V Okumagba (1976) 9-10 NSCC (Vol. 10) 445; (1976) 9-10 SC 227; (1976) 1 NMLR 200.*** Such documents of title must however be genuine, valid and subsisting to qualify as title documents - ***Nwadike V Ibekwe (1987) 4 NWLR (Pt. 67) 718***. However, it is not automatic that once an instrument of title to land is presented, it is acceptable as proof of ownership of the land therein granted or transferred by that instrument - ***Ngene V Igbo (2000) 4 NWLR (Pt. 651) 131***.

In the instant case, both parties claimed to have purchased the land in dispute and presented the documents of title from their alleged vendors. A document of title can only be

acted upon by a Court as sufficient proof of ownership if the Court is satisfied that the grant has the effect claimed by the holder of the instrument.

In the case of ***Apampa & Ors Vs Ogungbemi (2017) LPELR 43264 (CA)*** the Court held thus:

"It is not in doubt that production of documents of title is one of the five (5) ways of proving title to land in dispute. It does not however, mean that once a document of title is produced, it amounts to conclusive proof of title. The party producing and relying on such document need prove more than that. He must proceed to plead and trace the root of title of his grantor or vendor. The Courts have held that, once a document of title is tendered and admitted in evidence, the Court adjudicating on the dispute must carefully scrutinize and evaluate the document, with a view to determining whether:

(a) The document is genuine and valid;

(b) The document has been duly executed, stamped and registered;

(c) The grantor had the authority and capacity to make the grant;

(d) The grantor, in fact, had what he purported to grant;

(e) The document has the effect claimed by the holder of the document.

It would be seen therefore, that mere production of documents of title is not conclusive proof of title. See: ***Akinduro Vs Alaya (2007) 6 SC (Pt.2) 120 at 134 135; Kyari Vs Alkali (2001) 11 NWLR (Pt.724) 412; Romaine Vs Romaine (1992) 4 NWLR (Pt.238) 650 at 662; Oyeneyin Vs Akinkugbe (2010) 4 NWLR (Pt.1184) 265; and Korie Vs Ifenkwe (2018) LPELR 44987 (CA).***

In the instant case, the Claimant's title to the land is predicated on the production of title documents, being one of the five recognized methods of proof of ownership of land. In Paragraphs 3 and 4 of the Statement of Claim, it was averred thus:

***"3.The Claimant is the absolute owner and in possession of a parcel of land measuring 100ft by 208ft situate and lying between Messrs R.O. Eichie and E. Eriakha of Eriakha Avenue now General Hospital Road bounded Northward by Late Chief A.O. Ayewoh, Southward by Eriakha Avenue now General Hospital Road, Eastward by Mr. Imoibisa and Eastward by Mr. John Okokere a retired principal. The land will be further described in the litigation survey plan showing the fixtures and the land in dispute to be filed later and shall be relied on at the trial.***

***4. The Claimant purchased the land in July, 1967 from Mr. F.O. Omonfoma for the sum of Forty-three Pounds (43) which was evidenced in writing by a deed of Transfer/ Agreement. The said Deed of Transfer/Agreement as a receipt shall be relied on at the trial of this suit."***

In paragraph 2 of the Statement of Defence, the Defendant averred thus:

***"2.The Defendant strongly denies the averments as contained in paragraphs 3, 4,5,7,8,9,10, and 11 as false and misleading and put the Claimant to the strictest proof of same."***

This denial by the Defendant placed on the Claimant the burden of establishing the root of title of his predecessor in title. Thus, the Claimant cannot simply rest his title on the mere production of the Deed of Transfer allegedly executed in his favour by said Mr. F.O. Omonfoma whose title to the land has been challenged. Mere production of a registered conveyance is surely not enough. See: ***Lawson v Ajibulu (1997) 6 NWLR (Pt.507) 14; Bamgboye v. Olusoga (1996) 4 NWLR (Pt.444) 520; Otanma v. Youdubagha (2006) 2 NWLR (Pt.964) 337***.

The law is that a party must not only plead and establish his title to the land. He must plead and prove the title of the person from whom he derived his ownership of the land in dispute in tandem with the maxim, ***nemo dat quod non habet***, See ***Piaro v Tenalo (1976) 12 SC 37; Ogunleye v Oni (1990) 2 NWLR (Pt.135) 745; Nwadiogbu v Nnadozie (2001) 12 NWLR (Pt.727) 375; Olohunde v. Adeyoju (supra); Ige v Fagbohun [2001) 10 NWLR (Pt.721) 468.***

In the instant case, the Claimant did not plead and prove the origin of the title of Mr. F.O. Omonfoma. Under cross-examination, the Claimant stated thus:
***"I acquired the land in dispute from one F.O. Omofomah now late. I do not know how late Omofomah derived his title to the land. I do not know where Omofomah comes from. The eldest son of Omofomah is Felix Okpebhole aka Felolo. I do not know one Odianose Ehiagwina.".*** Clearly, the Claimant was bereft of any knowledge of his vendor's root of title.

In the case of ***Okpalugo v Adeshoye (1996) 10 NWLR (Pt.476) 77 @ 103 Ogundare JSC*** stated thus: ***"Plaintiff claimed through A. T. Bakare. To show he had a better title than the appellant he must establish the title of Bakare to the land... this he failed to do. He failed to plead and prove Bakare's root of title to the radical owner of the land. As things stand, the title he acquired by Exhibit 2 hangs in the air. I cannot in the circumstances, see how he could be said to have proved a better title to the land in dispute."***

I am of the view that the above scenario is quite similar to this case. The Claimant claimed his title through F.O.Omofomah. To show that he has a better title than the Defendant, he must establish the root of title of F.O.Omofomah to the land. But he failed to plead and prove F.O.Omofomah's root of title to the land. The alleged title which he acquired by the Deed of Transfer/Agreement which was tendered as a receipt of purchase, Exhibit A is therefore hanging in the air. Consequently, the Claimant has failed to prove his title by the production of any document of title.

The second means of proof which the Claimant is relying upon is proof by acts of ownership. The law is that where a Claimant in an action for declaration of title to land relies as his proof of title, on acts of ownership and possession in and over the land in dispute, extending over a sufficient length of time and are numerous and positive enough to warrant the inference that he is the true owner of the land and satisfactorily discharges the burden of proof on him in that regard, he will be entitled to the declaration sought. See: ***Ishola Vs Abake (1972) 5 SC 321, Onwugbufor Vs Okoye (1996) 1 NWLR (Pt 424) 252, Jinadu Vs Esurombi-Aro (2009) 9 NWLR (Pt 1145) 55, Olagunju Vs Adesoye (2009) 9 NWLR (Pt 1146) 225, Nwankwo Vs Ofomata (2009) 11 NWLR (Pt 1153) 496 Edohoeket Vs Inyang (2010) 7 NWLR (Pt 1192) 25.***

On proof by acts of possession, a person is said to be in possession when he is in occupation or physical control of the land. The degree of physical control necessary to constitute possession may vary from one case to the other. The act or conduct which constitutes possession may also vary with the type of land. See: ***Aliyu Vs. Dikko (2021) ALL FWLR (Pt. 632) 1714*** and ***Kareem vs. Ogunde (1972)1 SC 182***. In the instant case, the Claimant testified that he has being on the land since 1967 and also in physical possession. That in exercise of his alleged physical possession and also to serve as constructive notice to trespassers and innocent buyers, he erected a sign post bearing the message: "This Land belongs to P.E. Eichie" after purchasing the land. He alleged that this sign post was removed by the defendant. According to him, on the 11th of January, 2016 he went to the land with some labourers with the intention of erecting a perimeter fence around the land but the Defendant and his agents stopped them from working and drove them out of the land claiming that the land belongs to the Defendant. He confirmed that the Defendant dropped two (2) trips of sand on the land and is now developing the land with his thugs guarding his workers.

A party relying on acts of possession and ownership must prove that the acts of possession and ownership are numerous and positive and extend over a sufficient length of time to warrant the inference of ownership. See: ***JOSEPH IKYO MBAKUU v. AZA SYLVANUS AONDOKAA (2017) LPELR-44040(CA).*** Apart from the sign post which the Claimant allegedly placed on the land, the Claimant did not give evidence of other acts of possession and ownership which are numerous and positive enough extending over a sufficient length of time to warrant the inference that he owns the land. As a matter of fact under cross

examination, the Claimant asserted that the sign board on the land was planted ten years ago to indicate that the land in dispute now belongs to Barrister Paulinus E. Eichie who is his first son. I quite agree with the submission of the learned counsel for the Defendant that the assertion of the Claimant that the land now belongs to his first son who is not a party to the suit is inconsistent with the Claimant's pleadings and his statement on oath. All these further weakens the Claimant's attempt to prove his title by the alleged acts of possession.

Still on the acts of possession as a means of proof of title, it is settled law that acts of possession and ownership can only come into play where the root of title is clearly pleaded and duly established by cogent and satisfactory evidence. It is the establishment of the pleaded root of title which per force, paves the way for acts of possession and ownership. In other words, without pleading and leading evidence *viva voce* to satisfactorily establish root of title, it would be futile to resort to make a finding on recent acts of possession. See: ***Fasoro v. Beyioku (1988) 2 NWLR (pt. 76) 263; and WILLIAM AKAOSE & ORS v. ONYEBUCHI OKOYE & ORS (2016) LPELR-40172(CA).***

Thus, unless the origin of the title is valid, the length of possession does not ripen an invalid title of a trespasser to a valid ownership title. See: ***Jegede & Ors v. Gbajumo & Ors (1974) 10 SC 183 at p. 187.***

I have already made a salient finding that the Claimant did not plead and prove the origin of the title of Mr. F.O. Omonfoma who was his predecessor in title. Consequently, in the absence of credible evidence of proof of his root of title, the alleged acts of possession cannot sustain any proof of title. I therefore hold that the Claimant has not proved his title to the land by the third and fifth means of proof, to wit: by acts of ownership and long possession and enjoyment of the land.

The last means of proof is by 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.

Ownership of land may be established by proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute. See: ***Section 35 of the Evidence Act, 2011*** which provides as follows: ***"Acts of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done, but also of other land so situated or connected with it by locality or similarity that what is true as to the one piece of land is likely to be true of the other piece of land."*** Thus it is settled that 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, may also rank as a means of proving title to land in dispute, see ***IROLO v UKA (2002) 14 NWLR (PT.786) 195***.

In the instant case, the Claimant tried to prove his case by contending that his vendor was the owner of some adjacent lands which the vendor sold to the present owners who are the boundary men of the land in dispute.

As a general rule, the contiguity of a land in dispute to the land of a party does not create an inference that the land in dispute belongs to that party; the ownership has to be established - ***Adomba Vs. Odiese (1990) 1 NWLR (Pt 125) 165, Korobotei Vs. Obubo (1999) 9 NWLR (Pt 620) 655, Dagaci of Dere Vs. Dagaci of Ebwa (2006) 7 NWLR (Pt 979) 382***.

The Courts have held that where the circumstances of a case makes the provisions of Section 35 of the Evidence Act applicable, the legal implication of the section is that it raises a probability or an inference that the owner of the parcels of land connected or adjacent to the land in dispute is the owner of the land in dispute - ***Idundun Vs. Okumagba (1916) 9-10 SC***

***227, Ofem Vs. Ejukwa (1994) 2 NWLR (pt 326) 303, Anyabunsi V. Ugwunze (1995) 6 NWLR (pt 401) 255, Jinadu Vs. Esurombi-Aro (2009) 9 NWLR (pt 1145) 55, Nwakorobia Vs. Nwogu (2009) 10 NWLR (Pt 1150) 553, Dimkpa Vs. Chioma (2010) 9 NWLR (Pt 1200) 482.*** This point was explained in ***Archibong Vs. Ita (1954) 14 WACA 520 at 522*** where ***Coussey, J.A***. exposited thus:

***"The general proposition of law is that repeated acts of ownership done with respect to other places connected with the locus in quo by such common character of locality as to give rise to the inference that the owner of one is likely to be the owner of the other is receivable as evidence of ownership. Thus.....evidence of acts in another part of one continuous hedge adjoining the plaintiff's land is admissible in evidence on the ground that they are such acts as might reasonably lead to the inference that the entire hedge belonged to the plaintiff."***

The provisions of Section 35 of the Evidence Act cannot however be applied in vacuo. It can only be applied in relation to facts led in evidence See - ***Coker Vs. Olukoga (1994) 2 NWLR (pt 329) 648***. In the case of ***Nkado Vs. Obiano (1993) 4 NWLR (pt 287) 305 at 331, Oguntade, JCA*** (as he then was) explained the position thus:

***"I think it is necessary to say, for the benefit of Courts of trial, that in land matters, it is not in all cases that evidence of ownership or possession of land adjoining the land in dispute can be used as proof of the ownership of the land in dispute. The circumstances leading to such inference must be present before Section 46 of the Evidence Act can be called in aid...."***

The probability under Section 35 of the Evidence Act is not raised merely because a person who owns or possesses and enjoys a certain land shares boundary with the land in dispute. The requirement, in fact, goes far beyond that phenomenon. For the probability under the section to arise, there must be proof by the claimant or an admission by the defendant either that:

(a) The land in dispute is surrounded by other lands belonging to the plaintiff. It is however enough, if the land in dispute is hedged in by the plaintiffs other land that there is no reasonable right of access available to the defendant to the land in dispute; or
(b) That apart from contiguity, there is similarity in the acts of possession and enjoyment between the two lands that what is true as to the ownership or right of occupancy of the one piece of land is likely to be true of the other piece of land.

See the following cases on the point: ***Chukwu Vs. Nneji (1990) 6 NWLR (Pt 156) 363, Ofem Vs. Ekukwa (1994) 2 NWLR (pt 326) 303, Ndukwe Vs. Acha (1998) 6 NWLR (pt 552) 25, Orakwute Vs. Umolu (1998) 7 NWLR (Pt 557) 266, Olatunji Vs. Alaba (1999) 8 NWLR (Pt 563) 569, Okoko Vs. Dakolo (2006) 14 NWLR (Pt 1000) 401.***

Before a party can call in aid the provisions of Section 35 of the Evidence Act in his favour in a claim for declaration of title to a parcel of land in dispute, he must adduce evidence in proof of positive and numerous acts of ownership and possession that he carried out on the adjacent or connected portions of land to warrant the inference that he is the exclusive owner of the portions of land. See: ***Abibu Vs. Binutu (1988) 1 NWLR (Pt 68) 57, Oyewale Vs.***

***Oyesoro (1998) 2 NWLR (Pt 539) 663, Nwosu Vs. Okoli (1999) 2 NWLR (Pt 592) 598, Dagaci of Dere Vs. Dagaci of Ebwa (2006) 7 NWLR (pt 979) 382***.

The party must also prove the proximity of the two pieces of land and the nexus or contiguity; he must prove that the two pieces of land are very close, touching or almost touching each other; that is, the pieces of land must join or relate to each other substantially or materially, but not necessarily like Siamese twins See - ***Salami Vs. Lawal (2008) 14 NWLR (Pt 1108) 546.***

In the instant case upon a review of the evidence adduced by the Claimant, it must be noted that the Claimant himself did not even claim that the land in dispute is surrounded by other lands belonging to him, neither did he lead any evidence of any similarity in the acts of possession and enjoyment between the two lands that what is true as to the ownership or right of occupancy of the one piece of land is likely to be true of the other piece of land.

Here, the Claimant is simply asserting that his vendor was the owner of some adjacent lands which he sold to the present owners who are the boundary men of the land in dispute. This piece of evidence is too remote and farfetched to sustain the burden of proving title to land by 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. In the event, I hold that the Claimant has also failed to establish his title by this last method of proof.

Since the Claimant has failed to establish his title by any of the five methods of proof, I am of the view that he has not proved his root of title as required by law to warrant the judgment of this honourable court in his favour. ***The sole issue for determination is therefore resolved in favour of the Defendant. In the event the Claimant's claim is dismissed with N100, 000.00 (one hundred thousand naira costs) in favour of the Defendant***.

***Hon. Justice P.A.Akhihiero***

***27/07/21***

***<u>COUNSELS:</u>***

***O.M.EBOIGBE ESQ-----------------------------------------------------------------CLAIMANT***

***J.E.ENAHOLO ESQ---------------------------------------------------------------DEFENDANT***