IN THE HIGH COURT OF JUSTICE

OF EDO STATE OF NIGERIA

IN THE UBIAJA JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,

ON WEDNESDAY THE 8TH
DAY OF MAY, 2024

BETWEEN: ***SUIT NO. HUB/13/2015***

CHIEF SUNDAY IGUISI ……..CLAIMANT

(The Ologbosele of Ubiaja)

AND

MR. SUNDAY OKPAIRE OBINYAN…… DEFENDANT

JUDGMENT

In this suit by his Statement of Claim dated and filed on the 2nd day of November 2015, the Claimant claimed against the Defendant as follows:-

1) ***A declaration that the Claimant is the person entitled to apply and be granted a statutory right of occupancy over that piece or parcel of land measuring 400ft x 225ft x 400ft x 90ft lying, situate and being at Iguisi Quarters,Ubiaja which land has common boundaries in the front access road/Claimant's land. back by the land of Ojiezele Okoh,left by Dr.John Ogbeide and right by access road/Sir Tony Onegbedan's land;***
2) ***The sum of N500,000.00 (Five Hundred Thousand Naira) being general damages for trespass;***

3) ***Perpetual injunction restraining the Defendant by himself, his agents, servants, privies, assigns and any person claiming through him from further act of trespass thereon.***

The Defendant in response to the Claimant's suit filed his Statement of Defence on the 16th of September, 2016 in which he Counter-Claimed against the Claimant as follows:

1) ***A DECLARATION OF THE HONOURABLE COURT that the Defendant is the beneficial owner of the piece/parcel of land measuring 400 Feet by 225 Feet by 400 Feet by 225 Feet lying situate and being at the Iguisi-Idumehan Farmland, bothered by a piece/parcel of land abutting Sir Tony Onegbedan's house to the North with the Claimant's land [about 20 Feet long]; to the West is another boundary demarcated by the Defendant's grandfather's avocado pear abutting a fenced house on a piece/parcel of land belonging to the Obinyan family; to the east is another boundary line demarcated by one of the rubber trees planted by the Defendant's grandfather abutting a piece/parcel of land belonging to the Ebhohon family, and to the South is another boundary line demarcated by several docanut (ogbono) trees planted by the Defendant's grandfather and great-grand-fathers abutting a piece/parcel of land belonging to the Onegbedan family, all of which are lying situate and being at Idumehan Quarters, Ubiaja, Edo State, Nigeria;***
2) ***AN ORDER OF PERPETUAL INJUNCTION OF THE HONOURABLE COURT restraining the Claimant and/or his Agents, Servants, children, Privies and Assigns (howsoever described) from further acts of trespass on the said piece and parcel of land and/or the house, rights of easement and profits aprendre or any other physical structures thereon or appurtenant thereto, which said piece and parcel of land measures about 400 Feet by 225 Feet by 400 Feet by 225 Feet lying situate and being at the Iguisi-Idumehan Farmland, bothered by a piece/parcel of land abutting Sir Tony Onegbedan's house to the North with the Claimant's land [about 20 Feet long]; to the West is another boundary demarcated by the Defendant's grandfather's avocado pear abutting a fenced house on a piece/parcel of land belonging to the Obinyan family; to the east is another boundary line demarcated by one of the rubber trees planted by the Defendant's***

grandfather abutting a piece/parcel of land belonging to the Ebhohon family, and to the South is another boundary line demarcated by several docanut (ogbono) trees planted by the Defendant's grandfather and great-grandfathers abutting a piece/parcel of land belonging to the Onegbedan family;

3) ***AN ORDER OF THE HONOURABLE COURT for the sum of One Million (N 1, 000, 000. 00) only against the Claimant as General Damages in favour of the Defendant for [all] the Claimant's acts of trespass on the said piece and parcel of land measuring 400 Feet by 225 Feet by 400 Feet by 225 Feet lying situate and being at the Iguisi-Idumehan Farmland, bothered by a piece/parcel of land abutting Sir Tony Onegbedan's house to the North with the Claimant's land [about 20 Feet long]; to the West is another boundary demarcated by the Defendant's grandfather's avocado pear abutting a fenced house on a piece/parcel of land belonging to the Obinyan family; to the east is another boundary line demarcated by one of the rubber trees planted by the Defendant's grandfather abutting a piece/parcel of land belonging to the Ebhohon family, and to the South is another boundary line demarcated by several docanut (ogbono) trees planted by the Defendant's grandfather and great grandfathers abutting a piece/parcel of land belonging to the Onegbedan family;***
4) ***AN ORDER OF THE HONOURABLE COURT directing all the Defendants to bear the Cost of this suit, Solicitor's fees inclusive, put at the sum of One Million (N1,000, 000. 00) only***

In proof of his case the Claimant testified and he called one witness. Furthermore, he tendered some documentary exhibits.

The Claimant's case is that he is the owner of the parcel of land measuring 400ft x 225ft x 400ft x 90ft lying situate and being at Iguisi Quarters, Ubiaja and which forms a part of a larger parcel of land which he inherited from his late father Iguisi Ojieta Ologbosele as the first surviving son after performing the necessary burial ceremonies as required by Esan Native law and custom as applicable in Ubiaja.

He alleged that this parcel of land forms a part of a larger parcel of land which was deforested by his late grandfather and his father and was used for

farming purposes during their life time. He said that the owners of the parcels of land sharing common boundaries with the land in dispute are all natives of Iguisi Quarters, Ubiaja including that of Dr. John Ogbeide which was transferred to him by late Ebhohon Iyere who was also native of Iguisi Quarters,Ubiaja.

According to him, many years ago one late Ateso Okosun who hailed from Iguisi Quarters, Ubiaja but resided at Idumu-Ehan Quarters accompanied Mr. Okpaire Obinyan (late) who was the father of the Defendant to beg the Claimant's father to allow the father of the Defendant to be farming on the disputed land and some other parcels of land. He said that his late father permitted the late father of the Defendant to farm thereon and the Defendant's father paid annual homage to the Claimant's father for many years until he stopped farming before his death.

The Claimant alleged that sometime in January, 2014, his younger brother by name Eromonsele Iguisi telephoned to inform him that the Defendant trespassed unto part of his land and even transferred part of the land to one Mr. Oriakponon, a native of Uzea who have moulded blocks thereon.

He said that he came home and challenged the Defendant for trespassing into his land and told Mr.Oriakponon to remove his blocks from his land which he did and he told the Defendant not to enter the land again.

He said that sometime in February, 2014 the Defendant again trespassed unto the land and he summoned him to the Onojie's palace at Ubiaja.

He said that the Onojie carried out a customary arbitration over the dispute on the 17th of February, 2015 and gave judgment in his favour and the Defendant was told to vacate the land. The judgment at the Onojie's Palace was admitted in evidence as Exhibit "A". He said that the Defendant subsequently trespassed into the land hence he filed this suit against him.

In defence to the Claimant's claims and in proof of his Counter-Claim, the Defendant/Counter Claimant testified for himself and called two witnesses. In his evidence, the Defendant stated that he is the owner of the land measuring 400 Feet by 225 Feet by 400 Feet by 225 Feet lying situate and being at the Iguisi-Idumehan Farmland. He identified the parcels of land sharing a common boundary with the disputed land.

The Defendant maintained that the land is not situate at Iguisi as stated by the Claimant, but at Idumehan Quarters with common boundary with Iguisi, abutting a common access Road popularly known as Wire Road.

He alleged that the parcel of land in dispute was deforested by his ancestors and was subsequently inherited by his forebears who planted several economic trees on the land, many of which are still surviving on the land, none of which forms part of the Claimant's inheritance.

He emphasised that members of his family have been farming on the land from time immemorial. He said that he grew up to meet his grandfather already farming on the land and that upon the death of his grandfather he always accompanied his father and mother to the land from his childhood.

He said that he has been farming on the land in dispute together with his relations and children for up to fifty years unchallenged until recently when Tony Onegbedan and the Claimant intruded and started trying to balkanize the farm in equal parts for the purpose of claiming same.

The Defendant stated that he once had a confrontation with some members of the Obinyan family over ownership of one of the Mango trees that demarcated the said piece/parcel of land from that of the Obinyan family, which matter was reported to the Police in Ubiaja, Edo State. He said that the matter was charged to court and the Charge was decided in his favour. The certified true copy of the Judgment of the Chief Magistrate Court Ubiaja delivered on 17th June 2009 was admitted in evidence as Exhibit C.

He alleged that the CW 1, Tony Onegbedan made several unsuccessful attempts to claim part of his land and made a report of their boundary dispute to the Police at Ubiaja and when the Police investigated the matter, they resolved the dispute in his favour.

He maintained that he inherited the land in dispute from his late father Mr. Jacob Okpere, who inherited same from his own father, late Mr. Okpere, who also inherited same from his forefathers in accordance with Esan Native Law and Custom applicable in Idumehan. He said that his family has been in possession of the land in dispute for ages, without any interference or adverse challenge from the

Claimant or his ancestors, and that all the economic trees forming part of the land in dispute belong to him and his family. At the trial, he tendered photographs of the aforementioned crops together with an affidavit of compliance with the provisions of Section 84 of the Evidence Act, 2011 and they were admitted in evidence as Exhibits F, G, G1, G2 and G3 respectively.

The Defendant stated that during his life time, his father never went in company of one late Ateso Okosun or anybody to see the Claimant's father with respect to the said land, neither did he visit, beg nor had any dealings with the Claimant's father or anybody else with respect to the land, nor paid any homage whatsoever to the Claimant's father or anybody else over the said land in his lifetime or at death.

He maintained that he is the owner of the land in dispute, and that the CW 1 and the Claimant who he alleged are maternal uncles to the Onojie of Ubiaja are using the palace to intimidate him in order to take away his inheritance.

He said that he did not submit to the powers of the palace of the Onojie of Ubiaja in the matter of the customary arbitration because of the likelihood of bias in the proceedings since the Claimant who was complainant in that case is the maternal uncle of the Onojie of Ubiaja. He said that he refused to pay for the summons in the Palace in demonstration of his protest and that because of this; he was beaten up in the palace. He maintained that there was no valid arbitration at the palace.

The Defendant alleged that sometime in the year 2008, he transferred part of the large piece of land to one Mr. John Oriakpono who acquired the said land from him after conducting investigation and due diligence to his title and the transaction was reduced into writing. A copy of the Deed of Transfer between Sunday Okpere and John Oriakpono dated 22nd November, 2007 was admitted as a receipt of purchase and marked Exhibit D.

The Defendant alleged that sometime in the year 2009, he also transferred part of the land to one Mr. Noel Obinyan, and another Deed of Transfer between Sunday Okpere and Noel Obinyan dated 11/4/09 was admitted as a receipt of purchase and marked Exhibit E.

At the close of evidence, the learned counsel for the Defendant filed a written address which he adopted at the hearing of this case. Despite, several adjournments, the learned counsel for the Claimant did not file any final written address.

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

"Whether from the preponderance of facts and evidence before this honourable court the Plaintiff has proved his case on the balance of probabilities to be entitled to remedies sought?"

Arguing the sole issue for determination, the learned counsel submitted that it is trite law that a Claimant will swim or sink with his pleadings, because a case is won or lost based on the facts pleaded supported by compelling evidence and he referred the Court to the case of ***ADEKEYE v. ADESINA (2011) 191 LRCN 6.***

He posited that mere possession will not ripen into ownership. He submitted that the Defendant has proved his title to the disputed land through various ways. With respect to Exhibit A, counsel submitted that the Defendant was not given a fair hearing in the customary arbitration that took place at the palace of the Onogie of Ubiaja that produced Exhibit A. He maintained that the Defendant stated how he was beaten at the palace of the Onogie of Ubiaja and was not allowed to state his side of the story. Furthermore, he pointed out that from the evidence adduced at the trial, the Claimant is an uncle to the Onogie of Ubiaja so it is apparent that the Defendant cannot get justice from the purported arbitration that was held and he urged the Court to so hold.

Counsel submitted that the Fundamental Right to Fair Hearing is founded on the twin pillars of natural justice as enunciated in the twin maxims: *audi alteram partem* and *nemo judex in causa sua.* He submitted that these maxims form the basis of judicial independence and equality before the Law. He explained that the maxims enjoins an arbiter to always hear the other side before deciding any dispute. Furthermore, he said that the maxims ensure that both parties are treated equally before the Law as envisioned by the great proponent of the Rule of Law, Professor A.V. Dicey. He referred to the old English cases of ***COOPER v.***

WARDSWORTH BOARD OF WORKS (1863) 143 ER 414 and ***R. v. SUSSEX JUSTICES, Exparte McCarthy (1924) 1 KB 24***.

Counsel submitted that it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. He submitted that the judgment of the purported customary Arbitration cannot stand as same is tainted with element of bias and he urged the Court to so hold.

Counsel submitted that in an action for declaration of title to land, the Claimant must succeed on the strength of his case and not on the weakness of the Defendant's case and he relied on the case of ***Dakolo v.Rewane-Dakolo(2011) Vol 198 LRCN page 1 at page 9-10 ratio 5***.

Finally, he urged the Court to dismiss the Claimant's case.

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 address of the learned counsel for the Defendant.

Before, I go into the merits of this case; I wish to make some clarifications on the implications of the failure of the Claimant's counsel to file a Final Written Address in this suit.

It is pertinent to observe that the learned counsel for the Defendant filed a Final Written Address dated 19/02/21 filed on 10/03/21 which was formally adopted on the 28th of February, 2024. In other words, the Claimant's counsel was given a space of well over two years to enable him file his Final Written Address but he never availed himself of this opportunity to file any address. Of course on the day of adoption of written addresses, the Claimant and his counsel were absent from the Court.

What then is the implication of the failure of the Claimant's counsel to file a final written address?

It is settled law that the main purpose of an address is to assist the court, and is never a substitute for compelling evidence. Failure to address will not be fatal or cause any miscarriage of justice. In the case of ***SEGUN OGUNSANYA v. THE***

STATE (2011) LPELR-2349(SC), RHODES-VIVOUR, J.S.C explained the position thus:

"This is so because whether counsel addresses a court or not the court must do its own research with the sole aim of seeking the truth and determining which side is entitled to judgment. In the absence of address by counsel the trial was fair."

It has been held by the Supreme Court that addresses are designed to assist the court. Thus, a court may dispense with address where facts are straight forward and undisputed and failure to call on one party's counsel to address the Court is not a matter for the other party to complain about. See the cases of ***NIGER CONSTRUCTION LTD. V. CHIEF A.O. OKUGBENI (1987) 4 N.W.L.R. (PT.67) 787 S.C.*** and ***OGUGU & ORS V. STATE (1990) LPELR-19873(CA) (PP. 17 PARAS. C).***

The address of Counsel is a summation of facts admitted, proved or deemed conceded in the trial and the relevant law applicable to the facts. It is the means by which Counsel seeks to persuade the Court to lean in favour of his client. The purpose of the address by Counsel to a party is to demonstrate to the Court and Counsel for the adversary his opinion of the facts and the law as shown by the evidence before the Court. See the case of ***Forcados Ovo Obodo v. Stafford Oloma & Anor (1987) 6 SC 154.***

Notwithstanding its brilliance in form or presentation, a Counsel's address is not evidence or substitute for evidence. See the case of ***OMISORE & ANOR V. AREGBESOLA & ORS (2015) LPELR-24803(SC) (PP. 108 PARAS. B).***

From the foregoing, it is apparent where one party fails to address the Court after having had reasonable opportunity to do so, as in this case, the Court still has a duty to dispassionately consider the arguments, uninfluenced by the fact that the aforesaid party failed to address the Court. See the following decisions on the point: ***TRACTOR & EQUIPMENT (NIG) LTD & ORS V. INTEGRITY CONCEPTS LTD & ANOR (2011) LPELR 5034; ECHERE v. EZIRIKE (2006) ALL FWLR (PT 323)1597 AT 1608;*** and ***IWUCHUKWU & ANOR V. AG OF ANAMBRA STATE & ANOR (2015) LPELR-24487(CA) (PP. 68-69 PARAS. B).***

Thus the failure of the Claimant's counsel to assist the Court by filing a Final Written Address is not in any way fatal to the Claimant's case.

Upon a careful examination of the sole issue formulated by the learned counsel for the Defendant, I observed that the Defendant filed a Counter-Claim in this suit so I am of the view that there should be two issues for determination in this suit as follows:

1) ***Whether the Claimant has proved his title to the land in dispute on the balance of probabilities? and***

2) ***Whether the Defendant/ Counter-Claimant is entitled to the reliefs which he seeks in his Counter-Claim?***

I will now proceed to resolve the two issues seriatim.

ISSUE 1:

Whether the Claimant has proved his title to the land in dispute on the balance of probabilities?

In a claim for a declaration of title to land, the burden is on the Claimant to satisfy the Court that he is 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 the five ways of proving ownership of land 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, from the evidence led, the Claimant appears to be relying on the first and the third means of proof. To wit: proof by traditional evidence and by acts of ownership.

The Claimant's traditional evidence of title is that he is the owner of the parcel of land in dispute which he allegedly inherited from his late father Iguisi Ojieta Ologbosele as the first surviving son after performing the necessary burial ceremonies as required by Esan Native law and custom as applicable in Ubiaja. He alleged that this parcel of land forms a part of a larger parcel of land which was deforested by his late grandfather and his father and was used for farming purposes during their life time.

It is established principle of law that traditional history is the first mode of proof of title to land. See ***IDUNDUN V. OKUMAGBA (1976) 10 SC 140;*** and ***AWE & ORS V. ADEMEHINTI & ORS (2016) LPELR-41281(CA) (PP. 18 PARAS. E)***

A party relying on traditional evidence in proof of his title to land ascribes the originality of the root of title to another person, usually his ancestors through whom he claims his own title. By the claim, the party holds himself out as being seized of the vital information not only linking him to the root of title but also as to how the original owner became the owner. Such a party must have knowledge of the land and its founding. See the case of ***SHEHU SULE v. ZANKO ALIYU (2022) LPELR-58294(CA).***

In an action for declaration of title to land predicated on traditional evidence, for the party to succeed, he must plead and prove by cogent evidence the following:

1) Who founded the land;
2) How he founded the land; and
3) The particulars of the intervening owners through whom the Claimant basis his claim until the land devolved unto him through an unbroken chain leaving no gap which cannot be explained. The history must show how the land eventually came to be owned by the Claimant. See ***ELEGUSHI VS. OSENI (supra) OKOKO VS. DAKOLO (2006) 14 NWLR (Pt. 1000) 401.***

The Supreme Court held in the case of ***Alli Vs Alesinloye (2000) 4 SCNJ 264 at 284 - 285*** that in relying on traditional evidence it is not sufficient to merely prove that the Claimant or his predecessors in title had owned and possessed the land in dispute from time immemorial. See also the case of ***OYESIJI & ANOR V. AKINDOYIN (2012) LPELR-19697(CA) (PP. 13-15 PARAS. F).***

Applying the foregoing principles to the instant case, the Claimant's traditional evidence is that he inherited the land in dispute from his late father Iguisi Ojieta Ologbosele as the first surviving son after performing the necessary burial ceremonies as required by Esan Native law and custom as applicable in Ubiaja. He alleged that this parcel of land forms a part of a larger parcel of land which was deforested by his late grandfather and his father and was used for farming purposes during their life time.

From the evidence adduced by the Claimant, it is apparent that the evidence did not establish the identity of the person who founded the land; how he founded the land; and the particulars of the intervening owners until the land devolved on the Claimant through an unbroken chain without any gap.

On the authorities earlier cited this evidence of traditional history falls far short of the requirements to prove title by traditional evidence.

In an attempt to strengthen his case, the Claimant adduced evidence of an alleged customary arbitration over the disputed land where the palace of the Onojie of Ubiaja where gave judgment in his favour. The arbitral award was admitted as Exhibit "A".

The essence of customary arbitration involves interventions by local chiefs or family heads with the sole intention of amicably resolving disputes in line with local customary laws and practices.

In the first place a customary arbitration is not an exercise of the judicial power of the Constitution not being a function undertaken by the Courts. It is one of the many African Customary modes of settling disputes by referring the dispute to the family head or an elder or elders of the community for a compromise solution based upon the subsequent acceptance by both parties of the suggested award, which becomes binding only after such signification of its acceptance, and from which either party is free to resile at any stage of the proceedings up to that point. This is a common method of settling disputes in all indigenous Nigerian societies.

It is this kind of arbitration which the Court considered in the old case of ***Phillip Njoku v. Felix Ekeocha (1972) 2 E.C.S.L.R. 199*** where ***Ikpeazu, J.***, held thus:

> ***"Where a body of men be they Chiefs or otherwise, act as arbitrators over a dispute between two parties, their decision shall have a binding effect, if it is shown firstly that both parties submitted to the arbitration. Secondly that the parties accepted the terms of the arbitration, and thirdly, that they agreed to be bound by the decision, such decision has the same authority as the judgment of a judicial body and will be binding on the parties and thus create an estoppel."*** See ***AGU V. IKEWIBE (1991) LPELR-253(SC) at 25-26***.

Essentially, the basic ingredients for a customary arbitration to be binding and effective are the voluntary submission of the dispute to the arbitration of the individual or body, the agreement by the parties either expressly or by implication that the decision of the arbitrators will be accepted and binding, that the arbitration was in accordance with the custom and that the arbitrators reached a decision and published their award.

The law is that where customary arbitration is pleaded and proved it is binding on the parties and it also operates as estoppel per rem judicatam. See ***AWOSILE v. SOTUNBO [1992] NWLR [pt. 243] 1 at 29 E;*** and ***UFOMBA v. AHUCHAOGU (2003) 8 NWLR [pt. 821] 1 at page 37.***

For a Court to rely on a customary arbitration, it must be valid and binding and possess all the necessary ingredients/conditions for a binding customary arbitration. See the cases of ***MARK v IRONU & ORS (2019) LPELR - 47026 (CA) and UDOSEN v NDE (2019) LPELR - 47157 (CA).***

Coming to the instant case, the Defendant has consistently maintained that he did not submit to the alleged customary arbitration and that he never accepted the terms of the arbitration neither did he agree to be bound by the decision. As a matter of fact, he maintained that that he did not submit to the powers of the palace of the Onojie of Ubiaja in the matter of the customary arbitration because of the likelihood of bias in the proceedings since the Claimant who was the complainant in that case is the maternal uncle of the Onojie of Ubiaja. He said that he refused to pay for the summons in the Palace in demonstration of his protest and that because of this; he was beaten up in the palace. He maintained that there was no valid arbitration at the palace.

It is pertinent to note that apart from the alleged judgment of the customary arbitration which was admitted as Exhibit "A", the Claimant did not call any member of the arbitral panel to testify to establish the fact that the Defendant actually submitted himself to the alleged customary arbitration. It is established law that the evidence of a statement made to a witness by a person who is not called as a witness is called "hearsay" if the object of such evidence is to establish the truth of what is contained in the statement. See ***AKINGBOYE V. SALISU (1999) 7 NWLR (Prt 611) 434; OLALEKAN V. STATE (2001) 12 SC (Prt 1) 38;*** and ***OPARA V. AG, FEDERATION (2017) 9 NWLR (Prt 1569) 61***.

From the foregoing, I am of the view that the Claimant clearly failed to establish his root of title to the land in dispute by his traditional evidence.

In this suit, the Claimant also attempted to establish his title by acts of ownership. According to him, many years ago one late Ateso Okosun accompanied the father of the Defendant to beg the Claimant's father to allow the father of the Defendant to be farming on the disputed land and some other parcels of land. He alleged that his late father permitted the father of the Defendant to farm on the land and paid annual homage to the Claimant's father for many years until he stopped farming before his death. Apart from the *ipse dixit* of the Claimant about this

transaction involving the payment of homage for the use of the land, the Claimant did not tender any documentary evidence of receipts to substantiate his claims. The evidence of the Claimant is too weak to prove his alleged acts of ownership.

From the foregoing, I hold that the Claimant has not proved his title to the land in dispute on the balance of probabilities. Issue one is therefore resolved against the Claimant.

ISSUE 2:

Whether the Defendant/ Counter-Claimant is entitled to the reliefs which he seeks in his Counter-Claim?

In his Counter-Claim, the Defendant counter-claimed against the Claimant seeking reliefs for declaration, perpetual injunction and damages.

I will commence by pointing out that a counter claim is a separate action, independent of the Claimant's claim. Therefore the burden and standard of proof on the Defendant/Counter-Claimant is the same with that required by the Claimant. In the case of ***Onazi & Anor V C.G.C (Nig) Ltd & Anor (2015) LPELR-40583 (CA)***, a counter claim was defined as: ***"… an independent action which is usually appended to the main or principal claim for convenience of determination. See Ogbonna V A-G Imo State (1992)1 NWLR (Pt.220) 647; Usman V Garke (2013) 14 NWLR (Pt.840) 261.***

It has been described as 'a weapon of defence' which enables a defendant to enforce a claim against the plaintiff as effectively as in an independent action. It must however, be directly related to the principal claim but not outside and independent of the subject matter of the claim. See Nsefik V Muna (2014) 2 NWLR (Pt.1390) 151 at 184, Per Ariwoola, JSC. Per Ogbuinya, JCA pp. 37-38, Paras E-B."

Thus in this Counter-Claim, the burden is on the Defendant/Counter-Claimants to lead credible and cogent evidence to establish his counter-claims.

I have carefully examined the evidence of the Defendant/Counter-Claimant in proof of his counter-claim.

From the evidence adduced by the Defendant, the Defendant relied upon the following means of proof of his title: by traditional evidence; by acts of ownership; and by acts of long possession and enjoyment of the land.

In his proof by traditional evidence, the Defendant traced his alleged root of title to the land in dispute to the time when it was allegedly deforested by his ancestors and subsequently inherited by his forebears who planted several economic trees on the land.

He emphasised that members of his family have been farming on the land from time immemorial and that he grew up to meet his grandfather already farming on the land. He said that he has been farming on the land in dispute together with his relations and children for up to fifty years unchallenged until recently when the CW 1 and the Claimant allegedly entered the land.

I must observe that just like the evidence of the Claimant, the Defendant's evidence of traditional history did not establish an unbroken line of succession from the original member of the Defendant's family who allegedly deforested the land down to the Claimant.

However, the Defendant adduced unchallenged evidence to show that he and his forebears have been in possession of the land over the years carrying out farming activities. Under cross examination, the Claimant and his sole witness, the CW 1 admitted that the Defendant's father farmed on that land during his lifetime and after the death of the Defendant's father the Defendant continued to farm on the land. They admitted that some economic crops on the land were planted by the Defendant's father.

Furthermore, the Defendant led evidence of how he transferred part of the large piece of land to one Mr. John Oriakpono on the 22nd of November, 2007 and transferred another part of the land to one Mr. Noel Obinyan on 11/4/09.

The Defendant's evidence of acts of possession and enjoyment of the land is strong enough to sustain the Defendant's title to the land.

Thus, the Defendant from the evidence before the Court is in possession of the disputed land. Since the Claimant has failed to establish his title to the land, it is trite law that a person in possession is presumed to be entitled to the land he

occupies against the whole world except the true owner. See the case of ***OWOADE vs. OMITOLA (1988) 2 NWLR (PT. 77) 413*** and ***OTUNLA vs. OGUNOWO (2004) 6 NWLR (PT. 868) 184 at 200***.

There is no doubt that a person who is in possession of land has an interest to protect in the land and can come to Court to seek protection of that interest against all except a person with a better title. See the case of ***ADEGBESAN V. REGISTERED TRUSTEES OF CHURCH OF MERCY GOSPEL MISSION & ORS (2012) LPELR-7894(CA) (PP. 33 PARAS. A).***

It is settled law that possession of land is ninth-tenth proof of title against the whole world except a person with a better title to the land. See ***ISEOGBEKUN V. ADELAKUN (2013) 2 NWLR (PT. 1337) 140 @ P. 178;*** and ***SULEIMAN V. BAHAGO & ORS (PP. 52 PARAS. C).***

There is a statutory presumption of ownership in favour of the person in possession. See: ***section 143 of the Evidence Act, 2011.*** In the old case of ***Pius Amakor v. Benedict Obiefuna (1974) 3 SC 75-76,*** the Court exposited thus:

"It is trite law that trespass to land is actionable at the suit of the person in possession of the land. The person can sue for trespass even if he is not the owner nor a privy of the owner. This is because exclusive possession of the land gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrong doers, except a person who could establish a better title. Therefore anyone other than the true owner who disturbs his possession of the land, can be sued in trespass and in such an action, it is no answer for the Defendant to show that the title to the land is in another person. To resist the Plaintiffs claim, a Defendant must show either that he is the one in actual possession or that he has a right to possession."

There is irrefutable evidence that the Defendant and his predecessors have been farming on the land in dispute without disturbance from anybody until quite recently. Sequel to the foregoing, I am of the view that the Defendant has established a better title to the land in dispute based on the numerous acts of ownership and possession exhibited by him. He is entitled to a declaration of title in his favour.

On the grant of the relief of a perpetual injunction, this is a consequential order which should naturally flow from the declaratory order sought and granted by Court. The essence of granting a perpetual injunction on a final determination of the rights of the parties is to prevent permanently the infringement of those rights and to obviate the necessity of bringing multiplicity of suits in respect of every repeated infringement. See ***GOLDMARK NIGERIA LTD & ORS v. IBAFON COMPANY LTD. (2012) 49 NSCQR 1763 at 1820; and UDO V. ANYANKANA (2016) LPELR-41192(CA) (PP. 13-14 PARAS. C).***

Furthermore, the relief of perpetual injunction is not granted just for the asking, it is granted based on the determination of the rights of the parties, with the objective solely of preventing permanent infringement of those rights. See ***C.B.N. v AHMED (2001) 28 W.R.N. 38 and UNION BEVERAGES V PEPSICOLA (1994) 2 S.C.N.J. 157.***

On the claim for the sum of One Million (N 1, 000, 000. 00) only against the Claimant as General Damages in favour of the Defendant for the Claimant's acts of trespass, it is settled law that general damages are presumed by law as the direct natural consequences of the acts complained of by the Claimant against the Defendant. The assessment of general damages is not predicated on any established legal principle. Thus, it usually depends on the peculiar circumstances of the case. See: ***Ukachukwu vs. Uzodinma (2007) 9 NWLR (Pt.1038) 167; and Inland Bank (Nig.) Plc vs. F & S Co. Ltd. (2010) 15 NWLR (Pt.1216) 395.***

The fundamental objective for the award of general damages is to compensate the Defendant for the harm and injury caused by the Claimant. See: ***Chevron (Nig.) Ltd. vs. Omoregha (2015) 16 NWLR (Pt.1485) 336 at 340.***

Thus, it is the duty of the Court to assess General Damages; taking into consideration the surrounding circumstances and the conduct of the parties. See: ***Olatunde Laja vs. Alhaji Isiba & Anor. (1979) 7 CA.***

The quantum of damages will depend on the evidence of what the Defendant/Counter-Claimant has suffered from the acts of the Claimant.In the instant case, the Defendant did not state the value of the losses occasioned by the Claimant's trespass. However, it is usual in cases such as this, where the Claimant

is unable to quantify his losses, for the Court to award nominal damages. Incidentally, the damages claimed by the Defendant is not huge.

Issue two is therefore resolved in favour of the Defendant/Counter-Claimant.

On the whole, the Claimant's Claims are dismissed and the Defendant's Counter-Claim succeeds and is granted as follows:

1) ***A DECLARATION OF THE HONOURABLE COURT that the Defendant is the beneficial owner of the piece/parcel of land measuring 400 Feet by 225 Feet by 400 Feet by 225 Feet lying situate and being at the Iguisi-Idumehan Farmland, bothered by a piece/parcel of land abutting Sir Tony Onegbedan's house to the North with the Claimant's land [about 20 Feet long]; to the West is another boundary demarcated by the Defendant's grandfather's avocado pear abutting a fenced house on a piece/parcel of land belonging to the Obinyan family; to the east is another boundary line demarcated by one of the rubber trees planted by the Defendant's grandfather abutting a piece/parcel of land belonging to the Ebhohon family, and to the South is another boundary line demarcated by several docanut (ogbono) trees planted by the Defendant's grandfather and great-grand-fathers abutting a piece/parcel of land belonging to the Onegbedan family, all of which are lying situate and being at Idumehan Quarters, Ubiaja, Edo State, Nigeria;***
2) ***AN ORDER OF PERPETUAL INJUNCTION OF THE HONOURABLE COURT restraining the Claimant and/or his Agents, Servants, children, Privies and Assigns (howsoever described) from further acts of trespass on the said piece and parcel of land and/or the house, rights of easement and profits aprendre or any other physical structures thereon or appurtenant thereto, which said piece and parcel of land measures about 400 Feet by 225 Feet by 400 Feet by 225 Feet lying situate and being at the Iguisi-Idumehan Farmland, bothered by a piece/parcel of land abutting Sir Tony Onegbedan's house to the North with the Claimant's land [about 20 Feet long]; to the West is another boundary demarcated by the Defendant's grandfather's avocado pear abutting a fenced house on a piece/parcel of land belonging to the Obinyan family; to the east is another boundary line demarcated by one of the rubber trees planted by the Defendant's***

grandfather abutting a piece/parcel of land belonging to the Ebhohon family, and to the South is another boundary line demarcated by several docanut (ogbono) trees planted by the Defendant's grandfather and great-grandfathers abutting a piece/parcel of land belonging to the Onegbedan family;and

3) ***AN ORDER OF THE HONOURABLE COURT for the sum of Eight Hundred Thousand Naira (N 800, 000. 00) only against the Claimant as General Damages in favour of the Defendant for [all] the Claimant's acts of trespass on the said piece and parcel of land measuring 400 Feet by 225 Feet by 400 Feet by 225 Feet lying situate and being at the Iguisi-Idumehan Farmland, bothered by a piece/parcel of land abutting Sir Tony Onegbedan's house to the North with the Claimant's land [about 20 Feet long]; to the West is another boundary demarcated by the Defendant's grandfather's avocado pear abutting a fenced house on a piece/parcel of land belonging to the Obinyan family; to the east is another boundary line demarcated by one of the rubber trees planted by the Defendant's grandfather abutting a piece/parcel of land belonging to the Ebhohon family, and to the South is another boundary line demarcated by several docanut (ogbono) trees planted by the Defendant's grandfather and great grandfathers abutting a piece/parcel of land belonging to the Onegbedan family.***

The sum of N100, 000.00 (One Hundred Thousand Naira) costs is awarded in favour of the Defendant/Counter-Claimant.

Hon. Justice P.A. Akhihiero

08/05/24

<u>COUNSEL:</u>

P. OKHAREDIA ESQ ----------CLAIMANT

S.E.OKOH ESQ----------DEFENDANT/COUNTER-CLAIMANT