IN THE HIGH COURT OF JUSTICE

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

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

ON MONDAY THE

23RD DAY OF SEPTEMBER, 2024.

BETWEEN: ***SUIT NO: B/637/2021***

1. PASTOR OSAGIE IZE-IYAMU
2. I.O. FARMS LIMITED ***----------CLAIMANTS***

AND

1. GOVERNOR OF EDO STATE
2. ATTORNEY GENERAL OF EDO STATE ***-----DEFENDANTS***
3. EDO STATE GEOGRAPHIC INFORMATION SERVICE

JUDGMENT

By the Claimants' extant Amended Statement of Claim which was deemed as properly filed and served on the 15th of February, 2023, the Claimants claimed against the Defendants, jointly and severally as follows: -

a) ***A declaration that the 1st Defendant's purported revocation of 1st Claimant's right of occupancy to the parcels of land lying and situate at Ward 36/A, Amagba Village Area, Benin City vide the Defendants' publication on page 47 of the Vanguard Newspaper of the 7th of July, 2021 is in breach of section 28 of the Land Use***

Act, Cap. L5, Laws of the Federation of Nigeria, 2004 and consequently unconstitutional, illegal, invalid, null and void and of no effect whatsoever;

b) A declaration that the 1st Defendant's purported revocation of the 1st Claimant's right of occupancy to the parcels of land lying and situate at Ward 36/A, Amagba Village Area, Benin City without strict adherence to the due process of law on the nebulous ground of "overriding public interest to wit: for public purpose within the Edo State of Nigeria" is unconstitutional, illegal, invalid, null and void and of no effect whatsoever;

c) A declaration that the Revocation Notice published on page 47 of the Vanguard Newspaper of Wednesday, July 7, 2021 purportedly revoking Claimants' right of occupancy to land at Amagba Village Area, Oredo Local Government Area without strict adherence to the due process of law is unconstitutional, illegal, null and void and of no effect whatsoever;

d) A declaration that the 1st Defendant's revocation of the 2nd Claimant's right of occupancy to the parcel of land lying and situate at Amagba Village Area, Benin City, Oredo Local Government Area without strict adherence to the due process of law is unconstitutional, illegal and in breach of section 28 of the Land Use Act, Cap. L5, Laws of the Federation of Nigeria, 2004 and consequently, null and void and of no effect whatsoever;

e) An order setting aside the 1st Defendant's purported revocation of the Claimants' right of occupancy to the aforesaid parcels of land;

f) An order of perpetual injunction restraining the Defendants, their servants, agents and/or privies from encroaching on or doing anything whatsoever on the Claimants' land inconsistent with the Claimants' right thereto; and

g) N100, 000,000.00 (One Hundred Million Naira) general damages for Defendants' trespass to the aforesaid Claimants' land.

Upon the service of the originating processes on the Defendants, they filed their Joint Statement of Defence and the hearing commenced.

At the hearing, the 1st Claimant and one witness testified on behalf of the Claimants.

From the evidence adduced at the hearing, the Claimants' case is that they are the owners of the large parcels of land lying and situate at Ward 36/A, Amagba, Benin City, Oredo Local Government Area, and they have enjoyed long and undisturbed possession of their land and carried out diverse acts of ownership thereon such as erecting school buildings, piggery farm, fish pond, pineapple farm, poultry farm, grazing land and a football field.

Furthermore, the Claimants allegedly fenced all the parcels of land with concrete cement blocks.

At the trial, the Claimants, in proof of ownership of their land, tendered the four Certificates of Occupancy which were admitted in evidence as follows:

i. Certificate of Occupancy No. EDSR 17317 Exhibit B1;
ii. Certificate of Occupancy No. EDSR 17141 Exhibit B2;
iii. Certificate of Occupancy No. EDSR 17004 Exhibit B3; and
iv. Certificate of Occupancy No. EDSR 17003 Exhibit B4.

According to the Claimants, on Wednesday, the 7th of July, 2021 the 1st Defendant caused a publication to be made on page 47 of the Vanguard Newspaper of same date purportedly revoking the Claimants' right of occupancy to their different parcels of land lying and situate at Amagba Village Area, Oredo Local Government Area of Edo State. A Certified True Copy of the Vanguard Newspaper of 7/7/21 was admitted in evidence as Exhibit "E".

The Claimants alleged that before the aforesaid purported revocation of their right of occupancy, no notice was given to them in accordance with the law. They also alleged that the particulars of 1st Claimant's registered tittles with respect to the parcels of land at Amagba Village Area were deliberately omitted from the 1st Defendant's publication.

The Claimants maintained that the Defendants failed, refused and/or neglected to disclose the overriding public purpose for which their land at Amagba Village Area, Oredo Local Government Area with extensive development was acquired. They said that the Defendants' aforesaid newspaper publication was

bereft of facts pertaining to the overriding public purpose for which the Claimants' land was required.

The Claimants further maintained that the Defendants were actuated by malice and political bitterness in their decision to revoke the Claimants' land which was acquired long before the 1st Claimant contested the Edo State Governorship election against the incumbent Governor of Edo State in 2016 and 2020 respectively.

They contended that the 1st Defendant is totally bereft of the power to revoke the Claimants' aforesaid right of occupancy without strict adherence to the mandatory provisions of ***section 28 of the Land Use Act, Cap. L5, Laws of the Federation of Nigeria, 2004***.

They alleged that the Claimants have invested huge capital on the said land by setting up a Farm Academy/I.O. Farms Training Institute which has produced thousands of young farmers over the years. At the trial, the Claimants tendered the brochures of the 1st, 2nd and 4th Graduation Ceremonies of the said institute and they were admitted in evidence as Exhibits C1, C2 and C3 respectively.

The Claimants alleged that soon after the purported revocation of their title to the respective portions of their land, the Defendants sent their agents to mark Claimants' developments on the land with red paint, thus clearly showing the Defendants' intention to demolish the Claimants' property. At the trial the Claimants tendered the photographs of the Defendants' markings on the property. The Certificate of Authentication was admitted as Exhibits G while the five photographs were admitted as Exhibits G1, G2, G3, G4 and G5.

At the hearing, the Claimants stated that a purported letter from the indigenes and aborigines of Amagba Community written to the 1st Defendant was not brought to the Claimants' notice. They alleged that the 1st Defendant failed and/or neglected to hear from the Claimants before purportedly revoking the Claimants' title to their land in Amagba in breach of ***section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)***.

Furthermore, the Claimants alleged that they paid valuable consideration to the Amagba Community and other land owners who sold their interest in parts of the land, the subject matter of this suit to the Claimants.

At the trial, the Claimants tendered some agreements between them and the Amagba Community and other persons who sold their interest in their lands to the Claimants.

They also tendered some instruments of grant of land to them by the Amagba Community after payment of huge sums of money to the Community through their representatives.

The said agreements and the instruments of grant were admitted in evidence as follows:

1. Agreement made on the 30th of August, 2010 was admitted as Exhibit F1
2. Agreement made on the 9th of July, 2011 was admitted as Exhibit F2
3. Agreement made on 28/12/11 was admitted as Exhibit F3
4. Agreement made on 12/6/12 was admitted as Exhibit F4
5. Agreement made on 24/5/13 was admitted as Exhibit F5
6. Application for Allocation of Building Plot dated 2/6/09 was admitted as Exhibit F6
7. Application for Allocation of Building Plot dated 23/6/11 was admitted as Exhibit F7
8. Application for Allocation of Building Plot dated 2/8/09 was admitted as Exhibit F8
9. Application for Allocation of Building Plot dated 13/9/11 was admitted as Exhibit F9
10. Application for Allocation of Building Plot dated 14/7/10 was admitted as Exhibit F10
11. Application for Allocation of Building Plot dated 5/7/11 was admitted as Exhibit F11
12. Application for Allocation of Building Plot dated 19/7/11 was admitted as Exhibit F12
13. Application for Allocation of Building Plot dated 19/12/11 was admitted as Exhibit F13
14. Application for Allocation of Building Plot dated 16/5/2011 was admitted as Exhibit F14

The Claimants alleged that up till date, the Defendants have failed to disclose to the Claimants the specific overriding public purpose for which their title to the disputed land was revoked and the land compulsorily acquired in breach of the mandatory provisions of the ***Land Use Act and section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)***.

In their defence, the Defendants called two witnesses and tendered some documentary exhibits.

From their evidence, the Defendants' case is that before the revocation of the Claimants' right of occupancy, the indigenes and aborigines of Amagba Community where the parcels of land are situate, wrote a letter through their Odionwere, appealing to the 1st Defendant as Governor of Edo State to take over the undeveloped portion of land measuring about 224 plots of 100ft x 100ft size previously occupied by the Claimants. At the trial, the Defendants tendered a copy of the said letter which was admitted as Exhibit "H".

The Defendants maintained that in the said letter, the indigenes and aborigines of Amagba Community complained that the 1st Claimant, while in Government, used his privileged position to enter upon the land in dispute with the aim of developing same into an Agricultural institute which he failed to do and that the parcel of land has become a hide out for criminal elements.

The Defendants also alleged that upon the instruction of the 1st Defendant, the 3rd Defendant carried out an inspection and survey/sketch plan showing the bearings, lengths and coordinates of the land. A Certified True Copy of the sketch plan was admitted as Exhibit "I" at the hearing.

The Defendants stated that on the 25th of June 2021, the 1st Defendant, the Governor of Edo State in exercise of his powers under ***Section 28(1) and 38 of the Land Use Act of 1978***, issued a ***Notice of Revocation*** of the parcel of land, the subject matter of this suit for over-riding public interest to wit: required for the service of the government of Edo State of Nigeria, for public purpose within the Edo State of Nigeria. A Certified True Copy of the Notice of Revocation was admitted as Exhibit "J" at the hearing.

The Defendants alleged that the Notice of Revocation was pasted on the property, the subject matter of this suit on the same 25th of June, 2021.

They also alleged that the Notice of Revocation was published in the Nigerian Observer Newspaper as well as the Vanguard Newspaper of Wednesday 7th of July, 2021. The Certified True Copy of the Nigerian Observer Newspaper of 7th of July 2021 was admitted in evidence as Exhibit "K".

The Defendants further stated that on the 22nd of July, 2021,the 3rd Defendant wrote a formal letter to inform the 1st Claimant of the revocation and the letter was placed on his gate as the dispatch officer was not allowed access into the

premises on the 23rd of July, 2021. A copy of the letter dated 22/7/21 was admitted as Exhibit "L" at the trial.

The Defendants maintain that the revocation was properly done in accordance with the provisions of the ***Land Use Act*** which also made provision for compensation and was never actuated by malice or political bitterness but done in good faith for the interest of the Edo people.

Upon the conclusion of their evidence, the learned counsel for both parties filed their final written addresses which they adopted as their final arguments in support of their respective cases.

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

"Whether the Claimants have been able to prove their case before this honorable court that will warrant this court to grant their reliefs".

Opening his arguments on the sole issue for determination, the learned counsel submitted that the Claimants failed to prove their claims before this Honorable court.

He posited that an applicant can only apply for a Certificate of Occupancy over a piece or parcel of land that belongs to him. He said that in proof of their claim, the 1st Claimant gave evidence and tendered the four Certificates of Occupancy that were revoked by the 1st Defendant and some other title documents.

Addressing the Court on these title documents, the learned counsel referred to Exhibit B1 certificate of occupancy NO. EDSR 17313 which was issued to the 1st Claimant on 11/8/2011; Exhibit B2 Certificate of Occupancy NO. EDSR 17141 which was issued to the Claimant on 26/5/2011; Exhibit B3 Certificate of Occupancy NO. EDSR 17004 which was issued to the Claimant on 20/09/2010 and Exhibit B4 Certificate of Occupancy NO.EDSR 17003 which was issued to the Claimant on 20/9/2010 some of which are also covered by the Deeds of Transfer admitted as Exhibits F3, F4 and F13.

Learned counsel submitted that the 1st Claimant acquired his interest in Exhibits F3, F4, F5 and F13 long after the Claimants were issued with the Certificates of Occupancy over the said lands.

He submitted that the above facts and circumstances support the contention of the Defendants that the 1st Claimant used his position in government to acquire large expanse of land in Amagba Community without developing same as alleged in Exhibit "H". He submitted that he who seeks equity must do equity and he relied on the case of ***ADEJUMO VS AYANTEGBE [1989] 3 NWLR (PT110) 417 at 422-423.*** He maintained that the Claimant was not transparent in the acquisition of the lands covered by Exhibits B1-B4 and as such, he cannot come to this court to seek for the reliefs he is claiming in this suit.

Furthermore, he submitted that Exhibits F1-F14 were tendered by the 1st Claimant without linking them to the Certificates of Occupancy. He said that there is no evidence before this Court to show which of the lands in Exhibits F1-14 is tied to Exhibits B1, B2, B3 and B4. He submitted that the Claimants merely dumped Exhibits F1-14 in the Court without linking them to the Certificates of Occupancy. He maintained that this is a fundamental gap in the Claimant's case. He referred the Court to the case ***of OMISORE VS AREGBESOLA [2015] NWLR (Pt 1482) 205 at*** **322-323** where it was held that a court is not allowed to embark on an inquisitional examination of documents outside the court room. He also cited the cases ***of ANPP VS INEC [2010] 13 NWLR (Pt 1212) 459*** and ***UCHA VS ELECHI [2012] 13 NWLR (pt 1317) 330*** on the subject of dumping.

He urged the Court to hold that the Claimants have not been able to link the piece or parcels of land in Exhibits F1-14 with the Certificates of Occupancy marked as Exhibits B1-B4 in this case. He posited that from the foregoing, the Claimants do not have title to the parcels of land covered by Exhibits B1-B4 and they cannot complain of the revocation of Certificates of Occupancy of the said parcels of land.

Counsel submitted that it is an act of illegality to obtain a Certificate of Occupancy over a parcel of land in 2023 which was eventually purchased in 2024 and he cited the case of ***TINSLEY*** VS ***MILLIGAN (1994) 1 AC 340.***

Furthermore, counsel submitted that by the provisions of ***sections 1 & 2 of the Land Use Act 1978*** all lands comprised in the territory of each state in the Federation are vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the ***Land Use Act.***

Furthermore, he posited that by virtue of ***Section 21 of the Land Use Act 1978,*** no person can mortgage, transfer, sublease or alienate his interest in land without the consent of the Governor and he cited the case of ***SAVANAH BANK V AJILO [1989] NWLR (Pt.*** 37) 305. He maintained that the transactions covered by Exhibits F1-14 were done without the Governor's consent and are automatically null and void. He therefore submitted that the Certificates of Occupancy admitted as Exhibits B1-B4 are standing on nothing and are not in existence. He submitted that it is only a document that is validly made that will be subjected to revocation.

However, he submitted that assuming but not conceding that Exhibits B1-B4 were validly made and that same were revoked by the 1st Defendant in 2021, he maintained that the revocation was in line with the provisions of ***Section 28 of the Land Use Act 1978*** which gives the Governor the power to revoke a right of Occupancy for overriding public interest. He said that this function can be carried out by any public officer duly authorized by the Governor and a notice of such revocation will then be given to the holder of that right. He referred the Court to ***Section 28(6) of the Act (Supra)*** and the case of ***OSHIO VS FOREIGN FINANCE CORPORATION (sic).***

Counsel posited that upon the revocation of the rights of occupancy of the Claimants, a notice of same was promptly served on him and the revocation notices made provisions for the payment of Compensation for the value of the unexhausted improvements on the land.

He said that the Claimants failed to take advantage of this opportunity because they felt that the revocation was actuated by malice or political bitterness. He urged the Court to hold that the Defendants did what they were supposed to do upon the revocation of the Statutory Right of Occupancy of the Claimants and he urged the Court to dismiss the Claimants' case with punitive costs.

In his final written address, the learned counsel for the Claimants, ***K.O. Obamogie Esq., S.A.N.*** formulated two issues for determination as follows:

i. ***Whether having regard to the pleadings filed and evidence adduced in the suit, the 1st Defendant's revocation of Claimants' title to their vast parcels of land in Ward 36/A, Amagba Village, Benin City demarcated in Exhibit A is in accordance with the due process of law; and***
ii. ***Whether from the state of the pleadings and available evidence, the Defendants are not liable for trespass.***

Thereafter, the learned counsel argued the two issues seriatim.

ISSUE 1:

Whether having regard to the pleadings filed and evidence adduced in the suit, the 1st Defendant's revocation of Claimants' title to their vast parcels of land in Amagba Village, Benin City is in accordance with the due process of law.

Arguing this first issue, learned counsel submitted that the 1st Defendant's revocation of the Claimants' respective titles to the parcels of land demarcated in Exhibit A (Composite Plan dated the 19th of February, 2020) was carried out in flagrant breach of the due process of law.

He posited that although ***section 28(1) of the Land Use Act, Cap. L5, Laws of the Federation of Nigeria, 2004*** empowers the Governor of a State to revoke a right of occupancy for overriding public interest; there are fundamental conditions precedents to the lawful exercise of the power so conferred on the 1st Defendant by the Land Use Act. He said that these fundamental pre – conditions are as follows:

1) The revocation must be for overriding public purpose or public interest which must be disclosed to the holder of the right of occupancy. He referred to the provisions of ***section 28(2) (b)&(6) of the Land Use Act.***

   For ease of reference, he reproduced ***section 28(2) (b) and (6) of the Act*** as follows:

"28. Power of Governor to revoke rights of occupancy

(2) Overriding public interest in the case of a statutory right of occupancy means –

(b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposeswithin the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;

(6) The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder."

He referred to the decision of the Supreme Court of Nigeria in the case of ***Osho & Anor v Foreign Finance Corporation & Anor (1991) LPELR – 2801 (SC) at pages 47 – 48*** where ***Obaseki, JSC*** (of blessed memory) stated as follows:-

"I have in Ereku & Ors. v. The Military Governor of Midwestern State of Nigeria &Ors. (1974) 10 S.C. 59 at the trial stage years ago emphasized the need to spell out the public purpose in the notice of acquisition. I would now today give the same advice in cases of revocation. The words of Section 28 of the Land Use Act are clear and unambiguous as to what constitutes lawful revocation. Subsection 1 of Section 28 reads:

"It shall be lawful for the Military Governor to revoke a right of occupancy for overriding public interest."

Overriding public interest has been defined in subsection (2)(b) in the case of statutory right of occupancy to include "public purposes" within the state and in subsection (3)(a) in the case of a customary right of occupancy to include public purpose within the state.

Other purposes not specified as public purposes in the Section cannot be lawful purpose under the Act.

To revoke a statutory right of occupancy for public purposes, the letter and spirit of the laws must be adhered to. Since revocation of a grant deprives the holder of his proprietary right, the terms must be strictly complied with and strictly (sic) construction of the provisions made. See Bello v. The Diocesan Synod of Lagos &Ors. (1973) 3 S.C. p. 131."

He maintained that the above decision of the apex Court has been followed in a plethora of judicial authorities such as:

1) ***Cil Risk & Asset Management Limited v Ekiti State Government & Others [2020] 12 N.W.L.R. (Part 1738) 203 at 279 – 280.***
2) ***Dr Abdu Ho v Mustapha Abubakar & Others (2016) LPELR – 41635 (CA) at pages 14 – 16.***

3) ***Bredero Nigeria Ltd v Shyantor Nigeria Ltd (2016) LPELR – 40205 (CA) at pages 16 – 17, paras. F – E.***

He posited that in the instant case, the overriding public purpose for which the Claimants' land was required was not stated in the purported notice of revocation and up till date, the said public purpose has not been disclosed by the Defendants. He said that the DW1 and DW2 confirmed under cross examination that, as public servants, they do not know what the Government wants to do with the land.

Premised on the foregoing, he urged the Court to hold that the 1st Defendant has failed to disclose the overriding public purpose for which he revoked the Claimants' title to their land.

Counsel submitted that the second mandatory requirement for a valid revocation is that the notice of revocation must be served on the holder of the right of occupancy in accordance with the mandatory provisions of ***sections 28(6) and 44 of the Land Use Act***. He maintained that where there is a failure or neglect to serve the notice in accordance with the law, the revocation must be declared null and void and he relied on the following authorities: -

1) ***Nigeria Engineering Works Ltd v Denap Limited & Others [1997] 10 N.W.L.R. (Part 525) 481 at 525;***

2) ***Bredero (Nig) Ltd v Shyantor (Nig) Ltd & Others (2016) LPELR – 40205 (CA) at pages 16 – 17, paras. F – E;***

3) ***Kandix Ltd & Anor v AG Commissioner For Justice, Cross River State & Anor (2010) LPELR – 4389 (CA) at pages 13 – 17.***

Learned counsel posited that in the instant case, the notice of revocation (Exhibit J) was not served on the Claimants, at all, in clear breach of ***section 28(6) of the Land Use Act***. He said that even Exhibit L that was purportedly pasted on the subject matter of this action after the instant suit had been filed in this Honourable Court, was served in breach of ***section 44(a) & (b) of the Land Use Act***, which provides as follows: -

"Any notice required by this Act to be served on any person shall be effectively served on him –

(a) by delivering it to the person on whom it is to be served; or

(b) by leaving it at the usual or last known place of abode of that person; or"

He pointed out that Exhibit L is a letter dated the 22nd of July, 2021 (i.e. the date on which the Claimants' suit was filed) and purportedly served by DW2 at Amagba Village on 23rd July, 2021. He referred to paragraph 10, of DW1, Mrs Nora Ohiwerei's statement on oath adopted by the witness on 8th May, 2023 and paragraph 4 of DW2's statement on oath filed on 8th December, 2003.

He said that while the DW1 claimed in paragraph 8 of her statement on oath that the notice of revocation was served by pasting on the subject matter of this action on the 25th of June, 2021, DW2 was emphatic in paragraph 4 of his statement on oath that the said notice was served on the 23rd of July, 2021. He noted that Exhibit L is what DW2 erroneously referred to as the notice of revocation. He submitted that the Court cannot pick and choose any of these dates as the date of service of Exhibit L.

Again, he posited that Exhibit L was not even served at the 1st Claimant's residence disclosed therein as "No. 1, Osayande Avenue, Ugbor Village, Benin City, Edo State, Nigeria" but "***by pasting same on the property, the subject matter of this suit on the 23rd July, 2021***".

He said that the DW2 categorically stated that apart from Exhibit L, he did not serve any other document.

Furthermore, he said that as confirmed by DW2, contrary to paragraph 1 of Exhibit L, no newspaper publication was attached to Exhibit L when it was pasted on the property, the subject matter of this suit.

Learned counsel submitted that Exhibit L is not the notice of revocation envisaged by ***section 28(6) of the Land Use Act, 2004*** and consequently, same is ineffectual and untenable.

He posited that Exhibit J which is the actual notice of revocation issued by the 1st Defendant was never served on the Claimants and consequently, same is invalid and ought to be set aside. He said that the DW1's claim that the revocation notice was pasted on the property is belied by the evidence of the DW2.

Furthermore, he pointed out that no notice was served on the 2nd Claimant, even though the Defendants have the records of 2nd Claimant's interest in the subject

matter of the revocation. He said that the logical result of the Defendants' failure to give the Claimants notice of the revocation of their interest in the land is that the notice of revocation, Exhibit J is invalid and ineffectual and he relied on the case of ***Nitel v Ogunbiyi (1992) 7 N.W.L.R. (Part 255) 543 at 557***.

In the light of the foregoing, counsel submitted that the Defendants flagrantly breached the provisions of ***sections 28(1), (2) & (6) and 44 of the Land Use Act, Cap. L5, Laws of the Federation of Nigeria*** in their purported revocation of the right of occupancy of the Claimants over the subject matter and he relied on the following cases: ***Adole v Gwar (2008) 11 N.W.L.R. (Part 1099) 562 at 606 – 607;Samson Olatoyo Babatope v A.O. Sadiku & Anor (2017) LPELR – 41966 (CA) at pages 15 – 16;Ugwu & Others v Alaebo & Others (2016) LPELR – 41510 (CA) at page 19, particularly at paragraphs D – F; and Onochie & Others v Odegwa& Others (2006) LPELR – 2689 (SC) at 25.***

Counsel submitted that, compliance with the mandatory provisions of a statute is particularly required when the statute contains expropriatory provisions seeking to deprive citizens of their property and he relied on the following authorities: -

1) ***Osho v Foreign Finance Corporation, supra at page 48; and***
2) ***Kandix Ltd & Anor v AG & Commissioner for Justice, Cross River State, supra at pages 14 – 15.***

In conclusion, he urged the Court to resolve Issue No. 1 in favour of the Claimants.

ISSUE NO. 2:

Whether from the pleadings and available evidence, the Defendants are not liable for trespass.

Arguing this second issue, the learned counsel submitted that the tort of trespass has been described as a wrong to possession and it constitutes the slightest disturbance to possession by a person who cannot show a better title. He said that the remedy available to the person in lawful possession against the trespasser is damages for trespass and he relied on the following authorities: - ***Lot Enyioko & Others v Sir Joyful Onyema & Others (2017) LPELR – 426623 (CA) at pages 22 – 23, paragraphs F – D; Osho v Foreign Finance***

Corporation, supra, at page 38*; and* ***Lot Enyioko & Others v Sir Joyful Onyema & Others, supra, at pages 24 – 25***.

He submitted that, from the evidence before the Court, it is abundantly clear that the Defendants committed trespass on Claimants' land. He referred to paragraph 13 of DW1's statement on oath where DW1 admitted the trespass as follows: -

"13. That the act sought to be restrained is a completed act as the Edo State Government has since taken over possession of the property, subject matter in dispute with a view to using same for the service of the Government of Edo State."

Furthermore, he referred to the unchallenged and uncontroverted evidence of CW2, Erhauyi Alfred Iyekekpolor vide paragraph 5 of his statement on oath filed on 14th February, 2023 that, after the purported revocation of Claimants' respective titles to their land, the subject matter of this action, the Defendants, acting through their agents, invaded Claimants' land to mark the improvements thereon for demolition. He also referred to the relevant photographs which were admitted in evidence as Exhibits G, G1, G2, G3 and G4 respectively. He maintained that all these are evidence of trespass and that it was the timely intervention of this Honourable Court, by the orders of interim and interlocutory injunctions that saved the massive developments on the Claimants' land from unwarranted and unjustifiable demolition by the Defendants.

He submitted that the Claimants are entitled to damages for the above trespass. He urged the Court to take judicial notice of the severe depreciation of the national currency and the inflationary trend in the country and relied on the following decisions: ***Onagoruwa v I.G.P. (1993) 5 N.W.L.R. (Part 193) 593 at 650 – 651***; and ***Jide Arulogun v Commissioner of Police, Lagos State & Others (2016) LPELR – 40190 (CA) at pages 16 – 17***.

He therefore urged the Court to resolve issue two in favour of the Claimants.

In his final written address, the learned counsel articulated some arguments in response to the Defendants' counsel final address.

Responding to the Defendants' counsel's allegation that the Claimants had no valid title to the land in dispute before it was revoked by the 1st Defendant; he submitted that it is trite law that parties are bound by their pleadings. He pointed

out that the issue of the alleged defect in the Claimants' title was not pleaded by the Defendants and they cannot raise it at this stage of final address.

Furthermore, he posited that the Defendants did not state that the Claimants' title was revoked due to its invalidity. He said that the Defendants clearly stated in paragraph 5 of their Statement of Defence that the revocation was purportedly done pursuant to ***section 28(1) and 38 of the Land Use Act of 1978***, for over-riding public interest and the Notice of Revocation, Exhibit J is also to the same effect.

He maintained that parties are bound by their pleadings and relied on the following authorities: ***Emegokwue v. Okadigbo [1973] N.S.C.C. 220 at 222; Orunengimo& Anor v. Egebe & Ors (2007) LPELR-2779(SC) at Page 16 para C; INEC v. Advanced Congress of Democrats & Ors (2022) LPELR-58824(SC) at Page 30 para E;*** and ***Ojo v. FBN (2013) LPELR-23515(CA) at Pages 29-31 para F.***

Counsel maintained that the Defendants did not join issues with the Claimants on the alleged invalidity of the Claimants' title being the reason for the revocation. He submitted that the Defendants conceded that the Claimants had valid title to the land before the purported revocation.

He submitted that the plea of revocation is an acknowledgment of the existence of a right of occupancy prior to the act of revocation and the burden to plead and prove valid revocation of the Claimants' rights of occupancy therefore rests on the Defendants. For this submission, he relied on the case of ***N.E.W. Ltd v. Denap Ltd (1997) 10 N.W.L.R. (Part 526) 481 at 526*** where the Court of Appeal per ***Onalaja, JCA*** held as follows:-

"The plea of revocation involves acknowledgment of the existence of a right of occupancy prior to that act of revocation. The burden to plead and prove valid revocation of the right of occupancy therefore rests on that party alleging such revocation in this case the defendant."

Counsel posited that assuming but without conceding that invalidity of the Claimants' title was the reason for the said revocation, he submitted that the Defendants were still bound by law to give the Claimants a fair-hearing to defend themselves from the allegations in Exhibit H, which was an undated letter signed by non-identifiable persons and therefore utterly baseless. He said that the Defendants did not hear from the Claimants before purportedly

revoking their title in breach of the law. He relied on the decision of the Supreme Court in the case of ***Osho & Anor v. Foreign Finance Corporation & Anor (1991) LPELR-2801(SC) at Page 32 para B*** where Obaseki, JSC (of blessed memory) held as follows:**-** ***"Prudence and the law demand that a Governor revoking a right of occupancy for public purpose or for any purpose should accord all those aggrieved by the revocation fair hearing as provided by Section 33(1) of the Constitution if revocation is for breaches of the terms of the certificate of occupancy."***

On the submissions of the Defendants that Exhibits B1-B4 and F1-F14 were dumped by the Claimants on the Court, counsel submitted that the Defendants having conceded that the Claimants had title over the land, all that was required of the Claimants was to tender the documents, which speak for themselves and he relied on the following authorities:- ***Abdullahi & Anor v. INEC &Ors (2023) LPELR-61342(CA) at Page 26 paras. E; Sagoe v. Ojo & Anor (2019) LPELR-51013(CA) at Page 21 paras.***

Again, learned counsel submitted that the issue raised in paragraph 3.10 of the Defendants' final written address regarding the alleged absence of Governor's consent for Claimants' transactions was not raised in the pleadings and same is therefore untenable.

Premised on the foregoing submissions, he urged the Court to discountenance Defendants' counsel's submissions in his final written address and grant the Claimants' claims.

I have carefully considered all the processes filed in this suit, together with the evidence led in the course of the hearing and the address of the learned Counsel for the parties.

Upon a careful examination of the issues formulated by the counsel for the parties, I am of the view that the two issues formulated by the Claimants' counsel are more comprehensive enough to determine this suit. I will therefore adopt the two issues with some simple modifications as follows:

i. Whether the 1st Defendant's revocation of the Claimants' title to their alleged parcels of land in Ward 36/A, Amagba Village, Benin City was valid in law? And

ii. Whether the Defendants are liable for trespass.

ISSUE 1:

Whether the 1st Defendant's revocation of the Claimants' title to their alleged parcels of land in Ward 36/A, Amagba Village, Benin City was valid in law?

This is a civil case and the standard of proof is on the balance of probabilities and the preponderance of evidence.

The law is firmly settled that in a civil suit, the burden of proof lies on the person against whom the judgment of the Court would be given if no evidence was led on either side. However, the burden of proof of particular facts in a civil suit is not static, as the initial burden is on the person who asserts a particular fact and once that fact is established to the satisfaction of the Court, the burden shifts to the other party and so on until all the issues in controversy between the parties have been disposed of. See ***Sections 131, 132, 133 and 134 of the Evidence Act, 2011*** and the cases of ***Iroagbara v. Ufomadu (2009) LPELR-1538(SC);*** and ***Oyetunji v. Awoyemi & Ors (2013) LPELR-20226(CA).***

Essentially, in the instant case, the Claimants' are challenging the Defendants alleged wrongful revocation of the Claimants' right of occupancy to their parcels of land at Ward 36/A, Amagba Village, Benin City.

It is settled law that in Nigeria every person is entitled to acquire and own immovable property anywhere in Nigeria. However, the right to own immovable property like every other right is not absolute but subject to certain qualifications. The law of compulsory acquisition of land in Nigeria is rooted in the country's constitution. It is enshrined in the Nigerian Constitution that every Nigerian has the right to own private property and such property shall not be acquired compulsorily, except in the manner and for the purposes prescribed by a law that requires both the payment of prompt compensation and compliance with the rule of law on access to the court. See ***sections 43 and 44 of the Constitution of the Federal Republic of Nigeria, 1999.***

The ***Land Use Act of 1978*** is the umbrella statute that regulates the compulsory acquisition of land in Nigeria. It expressly provides that all lands comprised in the territory of each state in Nigeria are vested in the governor of that state and such land shall be held in trust and administered for the use and common benefit

of all Nigerians, and the Governor may revoke a right of occupancy for overriding public interest.

The relevant provision of the Land Use Act on the issue of revocation of a right of occupancy is ***section 28 of the Act*** which provides as follows:

"(1) It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.

(2) Overriding public interest in the case of a statutory right of occupancy means-

(a) the alienation by the occupier by assignment, mortgage, transfer of possession, sub-lease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or of any regulations made thereunder;

(b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;

(c) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.

(3) Overriding public interest in the case of a customary right of occupancy means-

(a) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;

(b) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;

(c) the requirement of the land for the extraction of building materials;

(d) the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sub-lease, bequest or otherwise of the right of occupancy without the requisite consent or approval.

(4) The Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the President if such notice declares such land to be required by the Government for public purposes.

(5) The Governor may revoke a statutory right of occupancy on the ground of-

(a) a breach of any of the provisions which a certificate of occupancy is by section 10 of this Act deemed to contain;

(b) a breach of any term contained in the certificate of occupancy or in any special contract made under section 8 of this Act;
(c) a refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Governor under subsection (3) of section 9 of this Act.
(6) The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor and notice thereof shall be given to the holder.
(7) The title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under subsection (6) of this section or on such later date as may be stated in the notice."

From the above provisions, it is evident that the Act stipulated clear provisions to guide the Governor of a State in the exercise of the power of revocation of a right of occupancy. One of the preconditions for the exercise of this power of revocation is that it must be shown clearly to be for overriding public interest. In order not to leave the Governor in any doubt as to the conditions for the exercise of his powers, the law went further to provide adequate guidance by defining in clear terms what overriding public interest means in the case of a statutory right of occupancy under the Act in ***subsection (2) of section 28***.

What this means is that any revocation of a right of occupancy by the Governor in exercise of powers under the Act must be within the confines of the provisions of ***section 28 of the Act***. Consequently, any exercise of this power of revocation for purposes outside those outlined or enumerated by ***section 28 of the Act*** can be regarded as being against the policy and intention of the ***Land Use Act*** resulting in the exercise of the power being declared invalid, null and void by a competent court in exercise of its jurisdiction on a complaint by an aggrieved party. See the cases of ***Osho v. Foreign Finance Corporation (1991) 4 NWLR (Pt.184) 157; Olohunde v. Adeyoju (2000) 10 NWLR (Pt.676) 562;*** and ***Dantsoho v. Mohammed (2003) 6 NWLR (Pt.817) 457 at 483.***

In the instant case, the Claimants' complaint is that the alleged revocation of their statutory rights of occupancy was not in compliance with the provisions of ***section 28 of the Act.***

In proof of their case, the Claimants led evidence that that on the 7th of July, 2021 the 1st Defendant purportedly revoked their right of occupancy to their different parcels of land lying and situate at Amagba Village Area, vide a publication made on page 47 of the Vanguard Newspaper.
They maintained that the purported notice of revocation did not disclose the overriding public purpose for which their land which was already developed was required. They also alleged that there was no proper service of the notice on them. They led evidence to show that they have invested huge capital on the said land by setting up a Farm Academy/I.O. Farms Training Institute that has produced thousands of young farmers over the years. At the trial, they tendered the brochures and other materials of the said institute.
The Claimants also led evidence to the effect that soon after the purported revocation of their title to the respective portions of land, the Defendants sent their agents to mark the Claimants' buildings on the land with red paint with the intention of demolishing the said buildings. The photographs of the marked buildings were tendered at the trial.

In defence of this suit, the Defendants did not deny the purported revocation of the Claimants' statutory rights of occupancy. They alleged that the revocation was for overriding public interest. They also did not deny entering into the land to mark the alleged buildings. As a matter of fact in paragraph 13 of the deposition of the D.W. 1 (Mrs. Nora Ohiwerei), the witness stated thus: ***"13.That the act sought to be restrained is a completed act as the Edo State Government has since taken over possession of the property, the subject matter in dispute with a view to using same for the service of the Government of Edo State."***

It is settled law that the burden to plead and prove a valid revocation of the right of occupancy rests on the party alleging such revocation, in this case, the Defendants. See the case of ***N.E.W. Ltd. v. Denap Ltd. (1997)10 N.W.L.R. (Pt. 526) 481 at 526.***

In this trial, the Defendant made very formidable efforts to prove that the revocation of the Claimants' rights of occupancy was in compliance with the provisions of ***section 28 of the Land Use Act.*** To establish their defence, the Defendants led evidence to show that the indigenes and aborigines of Amagba Community where the parcels of land are situate, wrote a letter, appealing to the

1st Defendant to take over the undeveloped portion of land measuring about 224 plots of 100ft x 100ft size previously occupied by the Claimants. At the trial, the letter was admitted as Exhibit "H".
The Defendants maintained that in the said letter, the indigenes and aborigines of Amagba Community complained that the undeveloped land has become a hide out for criminal elements.
The Defendants alleged that pursuant to the said letter, the 1st Defendant issued a Notice of Revocation of the parcel of land, the subject matter of this suit for over-riding public interest and a Certified True Copy of the Notice of Revocation was admitted as Exhibit "J" at the hearing.
The Defendants alleged that the Notice of Revocation was pasted on the property, the subject matter of this suit on the same 25th of June, 2021.
They also alleged that the Notice of Revocation was published in the Nigerian Observer Newspaper as well as the Vanguard Newspaper of Wednesday 7th of July, 2021. The Certified True Copy of the Nigerian Observer Newspaper of 7th of July 2021 was admitted in evidence as Exhibit "K".

The Defendants also alleged that on the 22nd of July, 2021,the 3rd Defendant wrote a formal letter to inform the 1st Claimant of the revocation and the letter was placed on his gate as the dispatch officer was not allowed access into the premises on the 23rd of July, 2021. A copy of the letter dated 22/7/21 was admitted as Exhibit "L" at the trial.

In a desperate bid to validate the Defendants' act of revocation, in his final written address, the very learned counsel for the Defendants challenged the validity of the Claimants' title documents. According to him, the 1st Claimant acquired his interest in the parcels of land vide some Deeds of Transfers which he obtained long after the Claimants were issued with the Certificates of Occupancy over the said lands. Furthermore, he alleged that the Deeds of Transfer were executed without obtaining the Governors consent as required by the provisions of the ***Land Use Act***.

From the evidence adduced, the Defendants are urging this Court to hold that the revocation was in compliance with ***section 28 of the Land Use Act.***

The principle on which the courts have acted from time immemorial is that any provision of the law which gives the government extraordinary powers of

compulsory acquisition of the properties of citizens should be strictly construed. Since revocation of a grant deprives the holder of his proprietary right, the terms must be strictly complied with and strict construction of the provisions made. See the following decisions on the point: ***Bello v. The Diocesan Synod of Lagos & Ors.(1973)3S.C;*** and ***Osho v. Foreign Fin. Corp. (1991)4 N.W.L.R. (Pt. 184) 157 at 195.***

On the validity of the alleged notice of revocation, it must be observed that the Defendants tendered several copies of the alleged notice to wit: a Certified True Copy of the Notice of Revocation which was admitted as Exhibit "J"; the same notice contained in a Certified True Copy of the Nigerian Observer Newspaper which was admitted in evidence as Exhibit "K"; and a letter dated 22/7/21 which was admitted as Exhibit "L" at the trial.

The contents of the notice in Exhibits "J" and "K" are basically the same. However, the letter Exhibit "L", merely contains a terse statement informing the 1st Claimant that the Edo State Governor has formally revoked the statutory right of occupancy of the disputed parcels of land. The letter refers to an attached Newspaper Publication but no such publication was actually attached. Under cross examination, the D.W.2 who admitted that he pasted Exhibit "L" on the gate of the 2nd Claimant also admitted that nothing was attached to Exhibit "L" when he pasted it on the said gate.

The Claimants have seriously challenged the validity of the notice on several grounds.
First, the Claimants maintain that the notice of revocation did not state the particular public purpose for which the land was compulsorily acquired for overriding public interest. For the avoidance of doubt, the relevant part of the notice of revocation states as follows: ***"I MR. GODWIN NOGHEGHASE OBASEKI, the Governor of Edo State of Nigeria hereby revoke the Statutory Right of Occupancy granted in respect of ALL THOSE parcels of land measuring approximately 18.0736 hectares the boundaries of which are described below and are required for overriding public interest to wit: for public purpose within the Edo State of Nigeria."***

Upon a careful examination of the above revocation clause, it is apparent that the particular public purpose for which the right of occupancy was revoked was

not disclosed. The superior courts have made some far reaching declarations on this type of revocation where the reasons are not disclosed.
In the case of ***N.E.W. Ltd. v. Denap Ltd. (1997) 10 N.W.L.R. (Pt. 526) 481 at 526 Onalaja JCA*** opined thus: ***"Prudence and law demand that a Governor revoking a right of occupancy for public purpose or for any purpose should accord all those aggrieved by the revocation fair hearing as provided by Section 33(1) of the 1979 Constitution if the revocation is for breaches of terms of the certificate of occupancy. There is no ground for with-holding information as to the public purpose for which the land is acquired from the holder of the right of occupancy and the public if there is no secrecy about public purpose."***

Furthermore in the old case of ***Ereku & Ors. v. The Military Governor of Midwestern State of Nigeria & Ors. (1974) 10 S.C. 59*** while interpreting a similar provision contained in the Public Lands Acquisition Law of Mid-Western State, the Supreme Court emphasised the need to spell out the public purpose in the notice of acquisition. That decision was followed by the apex Court in the latter case of ***Osho v. Foreign Fin. Corp. Suit (1991) 4 N.W.L.R. (Pt. 184) 157 at 195.***
In the case of ***LSDPC v. Banire (1992) 5 NWLR (Pt. 243) 620***, it was held that where an acquiring authority compulsorily acquires private property it is important that the particulars of the "public purpose" for which such property is acquired is given see also ***Chief Commissioner, Eastern Provinces v. J. M. Ononye (1944) 17 NLR 142.***

Again in the case of ***PROVOST LAGOS STATE COLLEGE OF EDUCATION & ORS V. EDUN & ORS (2004) LPELR-2929(SC) (PP. 32-33 PARAS. E)*** the apex Court exposited thus:
"... public acquisition of land for public purpose presupposes that the notice of acquisition should spell out the public purpose within the meaning of Section 2 of the Public Land Acquisition Law, Cap. 105 of Western Region, 1959 which was then applicable in Lagos State? It does not appear that exhibit 9 contained such vital information. Per NIKI TOBI.
It is worthy to note that in their pleadings and in the deposition of the D.W. 1, the Defendants alleged that the revocation was initiated by a letter from the indigenes of the community which was admitted in evidence as Exhibit "H", no

member of the community appeared to testify to confirm the allegations that the undeveloped portions of the land were serving as a hide out for criminals.
Contrary to the said allegations, the Claimants led unchallenged evidence to the effect that there is an agricultural institute on the land with staff and students on ground. They tendered the graduation brochures of the institute for three academic years. They also led pictorial evidence to show that the government had marked some of the buildings for demolition. It is difficult to reconcile these pieces of evidence with the allegations of the alleged indigenes that the place has become a hide out for criminal elements.
However, the vital element that is missing from the purported notice of revocation is the particular public purpose for the purported revocation.
During the trial, the defence witnesses were cross examined on the purpose for the revocation of the right of occupancy. Under cross examination, the star witness for the Defence, the D.W.1 stated as follows:
"Exhibit J did not disclose the public purpose for the revocation of the Claimants' lands. Up till now, the Claimants have not been told the public purpose for the revocation of their lands."
Again, the D.W. 2 repeated the same thing under cross examination.

In this suit, the Claimants also challenged the validity of the notice of revocation on the ground that the notice was not properly served on them.
The law is quite strict on the service of a notice of revocation.
The relevant provision on the service of the notice of revocation is ***section 44 of the Land Use Act*** which provides as follows:
"44. Any notice required by this Act to be served on any person shall be effectively served on him-
(a) by delivering it to the person on whom it is to be served; or
(b) by leaving it at the usual or last known place of abode of that person; or
(c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or
(d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office; or
(e) if it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served, by addressing it to him by the description of "holder" or "occupier" of the

premises (naming them) to which it relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises."

In the case of ***Nitel v Ogunbiyi (1992) 7 NWLR 543,*** the Court of Appeal nullified a revocation notice that was not personally served on the property owner at the address where he resided but was pasted on the building allegedly revoked. The Respondent thereupon instituted an action challenging the validity of the said acquisition and averred that since the service of the notice was not personal, the revocation was invalid and the acquisition illegal. The Court of Appeal upheld the Respondent's claim that the right was not properly revoked as laid down in ***section 28 (6) LUA. Achike J.C.A.***, as he then was, held that the requirement of ***section 28 (6)*** is that a notice of revocation of a right of occupancy must be served personally on the holder and any such notice purporting to revoke the right of occupancy by any officer duly authorized by the Governor is ineffectual if it fails to comply with this requirement. Explaining the rationale for this, ***Achike J.C.A.*** stated that the purpose of giving notice of revocation is to duly inform the holder of a right of occupancy of the steps being taken to extinguish his said right of occupancy. It will be quite invidious to accept any substituted service as a proper service of notice of revocation when the residence and whereabouts of the holder are within the knowledge of the party serving the notice. This, will hardly accord with good sense or common sense. That will be erecting the procedure for revocation under the Land Use Act on an imminently dangerous precedent at the hands of mischief makers outside the contemplation of the combined effect of ***Section 28 (6) and (7) and 44 of the Act***.

The facts of the present case are quite similar to the case of ***Nitel v Ogunbiyi (1992) supra.*** In the present case, the notice of revocation was published in two national newspapers. The actual notice of revocation was not served personally on the 1st Claimant. Furthermore, a letter informing the 1st Claimant of the revocation (Exhibit "L"), without the notice of revocation was not personally served on the 1st Claimant but was allegedly pasted on the gate of the 2nd Claimant.

Incidentally, the 2nd Claimant is a corporate body and ***section 44(d) of the Land Use Act*** explicitly provides thus: "***(d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office."***
On the alleged pasting of the notice on the gate of the 2nd Claimant, in the case of ***IWUCHUKWU & ANOR V. AG OF ANAMBRA STATE & ANOR (2015) LPELR-24487(CA (PP. 28-29 PARAS. F),*** the Court of Appeal categorically held that the service of the notice of revocation by pasting same on conspicuous places on the land being compulsorily acquired, on public buildings, schools, markets, et cetera within the area will not amount to service of the notice of revocation on the person whose right in the land is being revoked. This is because such publication is not one of the modes of service of the notice of revocation prescribed by ***S.44 of the Land Use Act***.

Furthermore, from the evidence adduced, it is clear that the substituted service of the notice of revocation in the two national newspapers was without the leave of the Court. This was also a clear violation of the provisions of the Act which does not make any provision for such mode of service.
In the case of ***ONONUJU & ANOR V. A.G ANAMBRA STATE & ORS (2009) LPELR-2692(SC)(PP. 54 PARAS. D),*** the apex Court held that the lower Court was in error when it held that publication in the Gazette constituted sufficient notice to the appellants as it is settled law that such a publication without personal service of same on the person(s) concerned does not make the acquisition/revocation valid. They maintained that if it were the intention of the legislature that publication in the government gazette satisfies the statutory mode of service of notice of revocation, it would have stated so in no uncertain terms.
Furthermore, in the case of ***BICHI INVESTMENT NIGERIA LIMITED v. SYBRON MEDICAL CENTRE LIMITED & ORS (2020) LPELR-51194(CA),*** the Court of Appeal held that a very careful reading of ***Sections 28 and 44 of the Land Use Act*** would disclose that publication in a Gazette and local newspapers are not modes or manner of service contemplated under the ***Land Use Act***.
It is important to note that Exhibit "J" which is the actual notice of revocation issued by the 1st Defendant was never served on any of the Claimants although it was tendered in this Court.

Coming to the arguments of the Defendants' counsel challenging the Claimant's root of title, I agree entirely with the submission of the learned counsel for the Claimants that the issue is clearly not supported by the pleadings and the evidence led at the trial. The parties did not join issues on the alleged defect in the Claimants' root of title.

Furthermore, I think it appears quite illogical that in one breath, the Defendants claim that they validly revoked the Claimants right of occupancy and in the same breath, they also assert that the Claimants have no valid right of occupancy. The Defendants cannot blow hot and cold, they cannot approbate and reprobate at the same time. In earlier cited case of ***N.E.W. LTD. V. DENAP LTD.(1997) 10 N.W.L.R. (PT. 526) 481 AT 526,*** which the learned counsel for the Claimants aptly cited, the Court held that the defence of revocation of right of occupancy is an acknowledgement of the existence of a right of occupancy prior to the alleged act of revocation.

From the foregoing, it is evident that the alleged revocation of the Claimants' right of occupancy was in breach of the provisions of the Land Use Act.

Issue one is therefore resolved in favour of the Claimants.

ISSUE 2:

Whether the Defendants are liable for trespass

It is settled law that trespass to land is the unlawful interference with the exclusive possession of land. It is the slightest disturbance to the possession of land by a person who cannot prove a better right of possession. In an action for trespass, it is immaterial that the interference is slight. In the case of ***OSUJI V. ISIOCHA (1998) 3 NWLR (Pt. 111) 623***, the court while quoting ***Coleridge C.J.*** in the case of ***ELLIS V. LOFTUS IRON CO. (1974) L.R. C.P. 10 @ 12,*** explained that if the Defendant placed a part of his foot on the Plaintiffs land unlawfully, it is in law as much trespass as if he had walked half a mile on it.

See also the following cases: ***Olagbemiro v. Ajagungbade III & Anor (1990) NWLR (Pt. 903) 544; DANJUMA V. S.C.C. (NIG) LTD & ORS (2016) LPELR-41553(CA) (PP. 16-17 PARAS. D).***

In the instant case, in their evidence, the Defendants admitted the fact that they entered the Claimants' parcels of land. In paragraph 13 of her deposition, the D.W.1 stated that the Edo State Government has since taken over possession of

the property, the subject matter in dispute with a view to using same for the service of the Government of Edo State. Since I have held that the revocation of the Claimant's right of occupancy was invalid, it is evident that the Defendants' entry upon the Claimants' parcels of land without their permission or consent amounts to trespass.

Issue two is therefore resolved in favour of the Claimants.

In this suit, the Claimants are also claiming general damages and a perpetual injunction against the Defendants.

By law, a Claimant does not have to establish the limit or extent of the trespass or encroachment on his land to be entitled to damages, as damages flows, automatically, upon proof of trespass. See the cases of ***ADESANYA V. OTUEWU & ORS (1993) 1 NWLR (Pt.270) 414;*** and ***OGAH & ANOR V. GIDADO & ORS (2013) LPELR-20298(CA) (PP. 37-38 PARAS. B).***

Trespass is actionable at the suit of the person in possession of land, who can claim damages or injunction or both. See the case of ***OGUNBIYI V. ADEWUNMI (1988) LPELR-2324(SC) (PP. 8 PARAS. F).***

In respect of damages in regard to trespass to land, a Claimant is entitled to nominal damages for trespass even if no damage or loss is caused, if damage or loss is caused, he is entitled to recover in respect of his loss according to general principles. See, the old English case of ***ARMSTRONG VS. SHEPHERD and SHORT LTD (1959) 4 Q.B. 384; (1959) 2 ALL E.R. 651 CA.*** Where the Defendant has by the trespass made use of the Claimant's land the Claimant is entitled to receive by way of damages such sum as should reasonably be paid for the use. See the cases of ***UMUNNA VS. OKWURAIWE (1978) 11 NSCC 319 AT 326;*** and ***AKHIGBE V. AIGBEZE (2017) LPELR-45656(CA) (PP. 17-18 PARAS. D).***

In law, general damages are classified into two (a) that in which the damages may be inferred, such as in cases of defamation, personal injury or trespass; and (b) that in which damages will not be inferred but must be proved such as in damages arising by way of loss of business.

In the instant case, the Claimants are claiming the sum of N100,000,000.00 (One Hundred Million Naira) general damages for the Defendants' trespass to the aforesaid Claimants' land.

From the evidence adduced in this case, the Claimants established the fact that they were running an institute in the premises before the Defendants trespassed into the premises. The Defendants admitted that the act of trespass was complete the D.W. 1 in paragraph 13 of her deposition categorically stated thus: ***"13.That the act sought to be restrained is a completed act as the Edo State Government has since taken over possession of the property, the subject matter in dispute with a view to using same for the service of the Government of Edo State."***

From the foregoing evidence, it is apparent that the general damages being claimed by the Claimants falls into the category of damages which cannot be inferred but must be proved being damages arising by way of loss of business. To prove such damages, the Claimants should have led concrete evidence of the financial losses if any arising from the trespass. No such evidence was adduced during the trial.

However, it is settled law that where there is no proof of actual injury, the damages to be awarded is nominal. See the cases of ***ELOICHIN (NIG) LTD V. MBADIWE (1986) 1 NWLR (PT. 14) PG. 47 AT 61;*** and ***IN ONYEMEH & ANOR V. IWUEZE & ANOR (2013) LPELR-21879(CA) (PP. 63-64 PARAS. B).***

In the instant case, although the Claimants established the Defendants acts of trespass, they were unable to lead evidence on the extent of the injuries sustained by the Defendants as a result of the acts of trespass. In the absence of proof of actual injuries which can support the award of colossal damages, I think the Claimants are entitled to some financial compensation for the inconveniences and losses arising from the Defendants' acts of trespass.

On the relief of perpetual injunction against the Defendants, it is settled law that once trespass has been proved, an order of injunction becomes necessary to restrain further trespass. See: ***ADEGBITE VS. OGUNFAOLU (1990) 4 NWLR (PT. 146) 578; BABATOLA VS. ALADEJANA (2001) FWLR (PT. 61) 1670 and ANYANWU VS. UZOWUAKA (2009) ALL FWLR (PT. 499) PG. 411.***

In the event, I hold that the Claimants are entitled to a perpetual injunction to restrain the Defendants, their agents, privies or servants from any further acts of trespass on the Claimants' lands.

Having resolved the two issues in favour of the Claimants, I hold that the Claims succeed and they are granted as follows:

I. ***A declaration that the 1st Defendant's purported revocation of the 1st Claimant's right of occupancy to the parcels of land lying and situate at Ward 36/A, Amagba Village Area, Benin City vide the Defendants' publication on page 47 of the Vanguard Newspaper of the 7th of July, 2021 is in breach of section 28 of the Land Use Act, Cap. L5, Laws of the Federation of Nigeria, 2004 and consequently unconstitutional, illegal, invalid, null and void and of no effect whatsoever;***

II. ***A declaration that the 1st Defendant's purported revocation of the 1st Claimant's right of occupancy to the parcels of land lying and situate at Ward 36/A, Amagba Village Area, Benin City without strict adherence to the due process of law on the nebulous ground of "overriding public interest to wit: for public purpose within the Edo State of Nigeria" is unconstitutional, illegal, invalid, null and void and of no effect whatsoever;***

III. ***A declaration that the Revocation Notice published on page 47 of the Vanguard Newspaper of Wednesday, July 7, 2021 purportedly revoking Claimants' right of occupancy to land at Amagba Village Area, Oredo Local Government Area without strict adherence to the due process of law is unconstitutional, illegal, null and void and of no effect whatsoever;***

IV. ***A declaration that the 1st Defendant's revocation of the 2nd Claimant's right of occupancy to the parcel of land lying and situate at Amagba Village Area, Benin City, Oredo Local Government Area without strict adherence to the due process of law is unconstitutional, illegal and in breach of section 28 of the Land Use Act, Cap. L5, Laws of the Federation of Nigeria, 2004 and consequently, null and void and of no effect whatsoever;***

V. ***An order setting aside the 1st Defendant's purported revocation of the Claimants' right of occupancy to the aforesaid parcels of land;***

VI. ***An order of perpetual injunction restraining the Defendants, their servants, agents and/or privies from encroaching on or doing anything***

whatsoever on the Claimants' land inconsistent with the Claimants' right thereto; and

VII. N5, 000,000.00 (Five Million Naira) general damages for the Defendants' trespass to the aforesaid Claimants' land.

I award the sum of N200, 000.00 (Two Hundred Thousand Naira) as costs to the Claimants against the Defendants.

P.A.AKHIHIERO
JUDGE
23/09/2024

<u>COUNSEL:</u>

K.O.OBAMOGIE ESQ……..……..CLAIMANTS

E.E. AKHIMIE ESQ…….……..……..…DEFENDANTS