

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO,
ON FRIDAY THE 27TH
DAY OF SEPTEMBER, 2024

BETWEEN: **SUIT NO. HCU/64/2010**
BARR. ANDREW I. EBOM.....CLAIMANT

AND
MR. VINCENT ANENIH
MR. EMMANUEL INETIANBOR }.....DEFENDANTS

JUDGMENT

In this suit by his amended statement of claim dated the 9th of March, 2020, the Claimant is claiming against the Defendants as follows:

- (i) *A declaration that the Claimant is the proper person entitled to apply for and be granted statutory rights of occupancy in respect of all that piece/parcel of land measuring approximately 100ft by 100ft lying and situate at Uzegua Quarters, Efandion Uromi, an area within the jurisdiction of this Honourable Court;*

- (ii) *A declaration that the purported transfer of the piece/parcel of land in dispute by the 1st Defendant to the 2nd Defendant, is null and void and of no legal effect; and*
- (iii) *A perpetual injunction restraining the Defendants, their servants, agents and workmen from further encroaching and interfering with the land in dispute.*

The 1st Defendant on his part filed a Counter-Claim wherein he is seeking declaration of title to the land in dispute. The 2nd Defendant who was duly served with the originating process and several hearing notices neither filed any defence nor appeared in court to defend this suit.

In proof of his case, the Claimant testified and called three witnesses.

From the evidence which he adduced at the trial, the Claimant's case is that he is the owner of a piece/parcel of land measuring approximately 100ft by 100ft lying and situate at Uzegua Quarters, off Uromi/Ubiaja Road, Efandion-Uromi.

He alleged that he acquired the said piece/parcel of land through purchase from one Mr. Oko-Uromi Omoazonmen of Uzegua Quarters, Efandion-Uromi on the 10th day of July, 2009 vide a Deed of Transfer which was admitted as Exhibit "B" at the trial.

He alleged that he took necessary steps to investigate his vendor's title before the purchase.

The Claimant further alleged that his vendor's witness, Stephen Okoyomon Okosun, now deceased was one of the elders of Uzegua Community of Efandion Uromi who knew when Oko-Uromi Omoazonmen inherited the land in dispute.

The Claimant alleged that his vendor acquired the said piece/parcel of land through inheritance from his deceased grandfather, Pa Ozigho Ojeba sometime in June 2009 in accordance with Esan native Law and Custom applicable in Efandion Uromi being the eldest male child of his deceased father who died without performing the funeral rites of his father, Ozigho Ojeba. He alleged that his vendor's grandfather, Pa Ozigho Ojeba deforested the said piece/parcel of land alongside other vast parcels of land over one hundred years ago.

The Claimant alleged that owing to the inability of his vendor's father to inherit the properties of his deceased father including the land in dispute, the right of inheritance devolved on one Anenih Elebalulu who was a grandchild to Pa Ozigho Ojeba.

According to him, the said Anenih Elebalulu could not also perform the burial rites of his father, Elebalulu Ozigho and that of his grandfather, Pa Ozigho Ojeba before his death.

The Claimant alleged that as a result of the inability of Anenih Elebalulu to perform the burial rites of his deceased father and grandfather, the right of succession and inheritance of the land in dispute and other properties of Ozigho Ojeba devolved on the Claimant's vendor, Oko-Uromi Omoazonmhen as the eldest grandchild of Ozigho Ojeba who duly carried out the said burial rites of his father and grandfather in June 2009.

According to him, although his vendor's father could not inherit the land in dispute owing to non-performance of the burial rites of the Claimant's vendor's father, he was however in exclusive possession of the disputed land until his death.

He alleged that his vendor inherited the land in dispute with other landed properties of his father and grandfather after he performed their burial rites.

The Claimant alleged that since he acquired the land in July 2009, he has been in possession, maintaining and exercising acts of ownership and control unchallenged until the 21st day of April 2010 when the 1st Defendant forcibly entered the land in dispute containing economic crops such as oranges, avocado pear etc with his agents, threatened the Claimant's life and chased away the Claimant and his agent.

The Claimant alleged that immediately after acquiring the land in dispute, he assigned one Faith Omondiale to be the caretaker of the land.

The Claimant maintained that the purported transfer of the land in dispute by the 1st Defendant to the 2nd Defendant is invalid and illegal. He alleged that one D.V. Okojie Esq who prepared the Deed of Transfer between the 1st and 2nd

Defendants, inadvertently did so oblivious of the fact that it was the same parcel of land now in dispute that he earlier on, acted as the Claimant's witness.

In defence of this suit and in proof of his Counter-Claim, the 1st Defendant testified and called one witness.

From the evidence which he adduced at the trial, the 1st Defendant's case is that one Pa. Omoazonmen was the father of the Claimant's vendor and the second son of late Pa. Ozigho Ojeba, the Claimant vendor's grandfather and the 1st Defendants great grandfather.

Furthermore, the 1st Defendants alleged that whereas the late Pa. Elenbalulu Ozigho (1st Defendant's grandfather) was the first son of late Pa. Ozigho Ojeba, the late Ufuah Ozigho was the third son of late Pa. Ozigho Ojeba; while the late Pa. Omoazonmen (through whom the Claimant's vendor purportedly traces his title) was the second son of late Pa. Ozigho Ojeba.

The 1st Defendant traced the origin of the land to the said late Pa. Elenbalulu Ozigho who allegedly deforested a vast expanse of land including the one in dispute in Uzegua quarters in Efandion Uromi.

He stated that the Claimant's vendor, Mr. Okouromi Omoazonmwun was the son of the late Pa. Omoazonmen Ozigho, the second son of late Pa. Elenbalulu Ozigho and under Esan Native Law and Custom, he is not qualified to inherit the intestate estate of late Pa. Ozigho, the 1st Defendant's ancestor.

The 1st Defendant alleged that he being a direct progeny of the late Pa. Elenbalulu Ozigho, has every right of inheritance to the intestate estate of his forebears, including the land in dispute, above the Claimant's vendor.

The 1st Defendant maintained that given the vendor's position and status in the Ozigho family tree, no person from the Omoazonmen lineage (including the Claimant's vendor) is qualified under Esan Native Law and Custom to inherit the intestate estate of late Pa. Ozigho.

He maintained that his father, Pa. Anenih Elenbalulu, performed all the burial rites of his departed father and grandfather and succeeded to their vast estate

situate in Uzegua Quarters, Efandion, Uromi, including the parcel of land now in dispute.

He alleged that the said vast expanse of land has economic and tree crops such as palm trees, ducanut trees, rubber trees, pea trees, mango trees and orange trees, cashew trees, pepper fruit trees, plantain plantation among other tree crops, which were planted by his great grandfather.

The 1st Defendant alleged that upon the death of his father on the 16th of September, 1998 his eldest son, Mr. Patrick Anenih who ought have succeeded him died childless in 2004, without performing the burial rite of their late father. He alleged that this incident created the opportunity for the 1st Defendant to become the next person in the line of children of their deceased father.

The 1st Defendant alleged that by virtue of his position, in 2007, he performed two burial rites in compliance with Esan Naitve Law and Custom as applicable to Uzegua Quarters Uromi, to enable him, as the eldest surviving son of his late father, Mr. Michael Anenih Elenbalulu, to inherit his intestate estate.

He identified the two burial rites as:

- (i) “Ehor-Oghae” performed by the 1st Defendant for his childless elder brother, Mr. Patrick Anenih; and
- (ii) “Itolibhin” – performed by the 1st Defendant for his late father, Mr. Michael Anenih Elenbalulu.

He alleged that the performance of the two burial rites qualified him to inherit his late father’s estate including the land in dispute.

The 1st Defendant maintained that he and the Claimant’s vendor (Mr. Okouromi Omoazonmen) never had the same father. He maintained that he and his forebears have been in lawful possession of the vast estate including the land in dispute and that the Claimant’s vendor’s father was never in exclusive possession of the land.

He alleged that he sold the parcel of land in dispute to the 2nd Defendant as the bona fide owner of same.

He alleged that D. V. Okojie Esq prepared the Deed of Transfer over this land for both the Claimant and the 2nd Defendant knowingly and he merely back dated that of the Claimant upon discovering that he had earlier prepared a similar Deed of Transfer over the said land for the 2nd Defendant.

He alleged that the Claimant's vendor recognized the proprietary right of the 1st Defendant over the entire vast land in Uzegua quarters when he withdrew the suit which he filed against him in Suit No. HCU/25/2010: Mr. Okouromi Omoazonmen Vs. Mr. Vincent Anenih in Uromi High Court on the 26th of September 2017. He tendered the Enrolment of Order which was admitted in evidence as Exhibit "D".

The 1st Defendant alleged that sometime in the year 2005 he gave a parcel of land measuring 300feet by 300feet to St. Ignatius Catholic Church in addition to the earlier land given to the Church by his late father to enable them expand the Church and the Deed of Gift was witnessed by the Odionwere of Uzegua quarters and Chief Oniha of Uromi. He tendered a copy of the Deed of Gift which was admitted as Exhibit "F" at the trial.

At the close of 1st Defendant's case, this suit was adjourned to enable the 2nd Defendant to put up his defence but he never showed up in Court hence he was foreclosed and the suit was adjourned for adoption of final written addresses.

In his final written address, the learned counsel for the 1st Defendant **R.E. Esekhaigbe Esq.** formulated two issues for determination as follows:

- (1) *Whether the Claimant has proved his case on a preponderance of evidence to be entitled to judgment; and*
- (2) *Whether the 1st Defendant proved his counter-claim to be entitled to judgment.*

Thereafter, the learned counsel articulated his arguments on the two issues seriatim.

ISSUE 1:

Arguing issue one, learned counsel submitted that the Claimant has failed to prove his case on the preponderance of evidence to be entitled to judgment. He enumerated the five ways of proving title to land to be as follows:

- (a) By traditional evidence
- (b) By the production of documents of title which are duly authenticated
- (c) By act of selling, leasing, renting of all part of a land or farming on it or a portion of it.
- (d) 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.
- (e) By acts of long possession and enjoyment of the land need to be proved.

See the case of *IDUNDUN VS OKUMAGBA (1976) 10 NSCL page 445 of 453 -457 LINES 42 to 45.*

He posited that by his evidence, the Claimant alleged that he derived his title to the land by purchase from one Okouromu Omozoamen who incidentally is a cousin of the 1st Defendant. He said that from the evidence led at the trial, the root of title of the said Mr. Okouromu Omozoamen was not established because nobody from Okouromu Omozoamen's family came to Court to substantiate the evidence led by the Claimant that he actually inherited the land.

Learned counsel referred to some pieces of evidence and submitted that Elenbalulu Anenih was in possession of the entire land until he died and that the 1st Defendant inherited the vast expanse of land, including the land in dispute.

He posited that the CW1 confirmed that as at the time he signed as a witness to the Claimant he had not visited the land but by paragraph 8 and 9 of his

Statement on Oath he admitted that he went to physically inspect the land before preparing Exhibit A.

He submitted that the entire content of Exhibit “A” prepared by CW1 is a complete admission of the fact that the land in dispute which the 1st Defendant sold to the 2nd Defendant is as of right. He said that a cursory look at recitals 1, 2 and 3 of Exhibit A shows clearly that the CW1 eloquently stated how the land transferred to the 2nd Defendant devolved on the 1st Defendant and the same shares a common boundary with other neighboring lands owned by the 1st Defendant and a street named after the 1st Defendant. He said that this clearly contradicted recitals 1, 2 and 3 of Exhibit “B” where the Claimant stated that the land in dispute was owned by his predecessor in title Mr. Okouromi Omozoamen as well as the neighboring lands.

Learned counsel posited that the above piece of evidence is apt and definitive because the CW1 in his testimony stated that as at the time he signed as witness to the Claimant he had not visited the land but he made Exhibit “A” after he visited the land inspected and interviewed the Defendants.

Learned counsel referred to paragraph 10 of CW1’s statement on Oath which he submitted was an admission against the interest of the Claimant and he cited the case of *KAMALU VS UMUNNA (1997) 5 NWLR (Pt 505) Page 321 at 337 paras G*.

Furthermore, he posited that by Exhibit D, the Claimant’s Predecessor in title withdrew the suit which he filed against the 1st Defendant in respect of the vast land and no other claim was made thereafter to the ownership of the entire land until he died hence his children by Exhibit G approached the 1st Defendant for a piece of land to bury their father which the 1st Defendant allegedly obliged them. He said that the foregoing shows clearly that Okouromu Omozoamen was not the owner of the land which he sold to the Claimant.

Counsel submitted that the Claimant has not been able to prove by traditional history how he acquired the land in dispute. He submitted that where witnesses of a party give inconsistent and contradictory evidence on material fact, their evidence must be regarded as unreliable and he cited the cases of *OSADIM VS TAIWO (2010) 6 NWLR (Pt. 1189) page 150 at 155 paras C-D*; and

ADEBAYO VS IGHODALO (1996) 5 NWLR Pt. 450 page 506 at 516 paras D-E.

He maintained that the evidence of traditional history of the Claimant vis-à-vis how his predecessor gained titled to the land is full of contradiction and gaps and he referred the Court to the case ***MOGAJI VS CADBURY NIG. LTD (1985) 1 NWLR (Part 7) (Supra) at page 395 Paragraph G.***

Furthermore, he posited that the Claimant testified that when he acquired the land there were economic trees thereon. He maintained that the Claimant could not have been farming on the land when the economic trees were still there. He said that the Claimant admitted the fact that his predecessor in-title withdrew the suit he filed against the 1st Defendant in respect of the said land. He said that this put an end to any claim to the land by his predecessor in-title.

Consequent upon the foregoing, he urged the Court to hold that the Claimant has failed to prove by traditional evidence that he is the owner of the land.

On proof by long possession and enjoyment of the land, learned counsel submitted that the Claimant failed to prove that he was in long possession as against the 1st and 2nd Defendants. He said that from the testimony of the Claimant and the CW3, they alleged that Claimant was in long possession of the land for eight months before he and his caretaker were chased away from the land by the 1st Defendant. He said that the caretaker of the Claimant, the “CW3” admitted under cross examination that when he went to the land for the first time he met a perimeter fence on the land which presupposes that the 1st and 2nd Defendant were already in possession of the land. He said that this is consistent with the testimony of the 1st Defendant and his witness DW1 that they are in possession of the land till date.

Furthermore, he posited that the Claimant did not survey the land which could have been an act of possession and as such the identity of the land which he claims to have is not defined.

He said that assuming without conceding that the Claimant was in possession of the land for eight months as alleged, he submitted that a period of eight months is too short to plant or harvest any crop on the land as claimed by the Claimant.

He submitted that it is settled law that for a Claimant to succeed in a claim for a declaration of title to land, the Claimant must show evidence of long possession enjoyment of the land and he cited the case of ***EIGBEGWU VS OKE (1996) 5 NWLR Part 447 page 128 at pages 144-145 paragraph H-B.***

Furthermore, counsel submitted that the Claimant has failed to prove by any credible document that he is the owner of the land in issue. He submitted that Exhibits A and B tendered by the Claimant are mutually contradictory in their content. He said that whereas Exhibit A shows that the 1st Defendant inherited the land and all the adjoining land to the land the subject matter of this suit and even gave out land as a gift to St. Ignatius Catholic Church the Claimant in Exhibit B claims that his predecessor is the one that inherited the land, which is contrary to the evidence in Exhibit A as clearly documented by CW1.

Furthermore, he posited that neither the Claimant's predecessor in title nor any member of his family came to the Court to testify in support of the Claimant's title. He posited that Exhibit G showed that the 1st Defendant gave the Claimant's vendor's children land to bury their father. He said that this shows that the Claimant's predecessor in-title is not the owner of the land which he sold to the Claimant.

He posited that the Counsel to the Claimant in his written address made heavy weather of the doctrine of priority of interest because the date in Exhibit B was earlier in time. He submitted that priority of interest does not rest on un-established and unproven facts and he cited the case of ***AGBONIFO VS AIWERIOBA (1988) 1 NWLR (Pt. 70) Page 325 at 335 Paragraphs F to H.***

He posited that the document of title to land, Exhibit A produced by the 1st and 2nd Defendants is superior and more authentic than Exhibit B which was contrived by the Claimant to enable him enter and take the Defendants land by force. He said that the contents of Exhibit B were contradicted by the Claimant and his witnesses during trial and as such it is a defective document. He maintained that it is settled law that no defective document of title to land can displace a valid document of title land and he relied on the case of ***AGBONIFO VS AIWERIOBA (Supra) Page 344 Paragraphs G-H, per Obaseki JSC (as he then was).***

He concluded that the Claimant failed to prove his case on the balance of probability to be entitled to judgment and he urged the Court to dismiss this suit.

ISSUE 2:

Arguing issue two, counsel submitted that the 1st Defendant has proved by credible evidence that he is owner of the piece of land the subject matter of this suit which he sold to the 2nd Defendant. He posited that the evidence of the 1st Defendant and his witness DW1 are more credible and reliable than that of the Claimant.

He submitted that from the state of pleadings and the evidence the Claimant based his case on the fact that the 1st Defendant has no land which he sold to the 2nd Defendant.

He posited that the Claimant did not file any Defence to the 1st Defendant's counter claim and he referred to the case of ***DABUP VS KOLO (1993) 9 NWLR (Pt. 317) page 254 at 281 Para A-B*** where the Court held that where a Claimant fails to file a defence to a Counter Claim, the Counter-Claimant is entitled to Judgment. He therefore urged the Court to grant the Counter Claim of the 1st Defendant.

In his final written address, the learned counsel for the Claimant ***Dr. P.E. Ayewoh Odiase*** formulated two issues for determination as follows:

- 1. Whether the Claimant has led credible evidence in proof of his claim entitling him to the judgment of this honourable court? and***
- 2. Whether the ownership claim of the Defendants, particularly the 1st Defendant, is not spurious and gold digging?***

ISSUE 1:

Arguing issue one, the learned counsel submitted that the Claimant has led cogent and credible evidence in proof of his claim before this Honorable Court. He posited that the Claimant who relied on purchase, traditional history and acts of long possession led evidence of how the land in dispute which formed part of a vast expanse of land was deforested by his vendor's grandfather after which it

devolved on his vendor's father and finally on his vendor through inheritance. He submitted that the evidence of the Claimant is consistent with evidence of traditional history and he cited the case of *Iroagbara V Ufomadu (2009) 30 W.R.N, Page 1 at P.16 lines. 10-15.*

Counsel submitted that the Claimant led credible evidence to prove that the land in dispute is situate at Uzegua Quarters, Efandion, Uromi.

Furthermore, he posited that the evidence elicited from the DW1 under cross-examination reveals that he lied when he told the Court that he does not know whether Oko-Uromi Omoazonmen, his uncle, sold the land in dispute to the Claimant as against paragraph 24 of his Statement on Oath.

He said that the DW1 further told the Court under cross-examination that he does not also know whether Oko-Uromi Omoazonmen withdrew the suit he filed against the 1st Defendant when the persons the 1st Defendant sold to, repurchased from him as against his deposition in paragraph 26 of his Statement on Oath.

Again, learned counsel submitted that the DW1 whose Statement on Oath contains the traditional history of the land in dispute, however told the Court under cross-examination that he does not know who deforested the land in dispute and that everything he stated about the history of the land in dispute, was what he was told.

He posited that the aforesaid admission by the DW1 shows that he does not know anything about the land in dispute but merely came to court to support his father's spurious claim to the ownership of the land in dispute without more. Furthermore, he maintained that the Statement on Oath of the DW1, which contains other facts which he admitted were not within his personal knowledge, amounts to hearsay and on meaning of hearsay he referred to the case of *Habibu v. State (2023) LPELR-60351(SC), Mohammed v. A-G, Fed (2020) LPELR-52526(SC) and APC v. Moghalu & Ors (2022) LPELR-56993(CA).*

Again, counsel posited that the 1st Defendant who had the opportunity to challenge the Claimant's evidence of possession and ownership did not do so by showing that the land in dispute never belonged to the Claimant's vendor during

cross-examination. He said that the 1st Defendant told the Court under cross-examination that he was not aware that the land in dispute was sold to the Claimant before he, 1st Defendant sold it to the 2nd Defendant in 2010.

He said that the 1st Defendant further prevaricated under cross-examination when he told the Court that he did not say that the CW1, D.V. Okojie back-dated the Claimant's title document as against paragraph 15 of his additional Statement on oath of 19th day of November, 2020. He therefore submitted that since the 1st Defendant admitted under cross-examination that Exhibit "B", the Claimant's title document is genuine and authentic, this Honourable Court should rely on it in granting the reliefs of the Claimant to the land in dispute.

Furthermore, counsel posited that evidence from the Claimant and his witnesses reveal that Exhibit "B", the Claimant's title document takes priority over Exhibit "A", the 2nd Defendant's title document as Exhibit "B" was executed on the 10th of July, 2009 as against Exhibit "A" which was purportedly executed on the 29th day of March, 2010 eight months after the Claimant took effective and exclusive possession of the land in dispute. He therefore submitted that Exhibit "B" has fully complemented the oral evidence before the Court which is not only cogent but credible and he cited the case of *Bunge v Governor of Rivers State (2006)10M.J.S.C. Page 136 at P.184 paras. D.*

He submitted that from the totality of the evidence before the Court, it is clear that the Claimant and the 1st Defendant traced their root of title to a common grantor, Pa. Ozigho who was the exclusive owner of a vast expanse of land, part of which is now in dispute. Therefore he posited that the doctrine of priorities audibly expressed in the latin maxim "*qui prior est tempore est jure*", meaning that **he who is first has the strongest right**, avails the Claimant who acquired first from an acknowledged owner and he cited the cases of *Auta V Ibe (2001-2004) Vol. 4 SCJL, Page 808 at 809*; and *Omiyale V Macaulay (2005-2009) Volume 5, SCJL, Page 841 at 843.*

He submitted that there is evidence before the Court that the land in dispute is in possession of the Claimant who was farming on it and harvesting the economic crops through the CW3 before this dispute arose. He said that the effect of the Defendant's inability to challenge the aforesaid evidence amounts to admission

and he cited the case of *Olosun V Ayanrinola (2009) 16 W.R.N. Page 113 at p.125 lines 25-30.*

Counsel submitted that the law is trite that once it is proved, as in the instant case, that original ownership of property is in a party, the burden of proving that the said party has been divested of the ownership, rests on the other party and he cited the case of *Orlu V Gogo-Abite (2010) Vol. 181 LRCN, page 193 at P.216 EE.*

He submitted that the evidence of the Claimant and his witnesses has passed the acid test of what a Claimant must established in order to succeed in a claim for declaration of title and he cited the case of *Obineche V Akusobi (2010) 30 WRN Page 17 at P. 137 lines 25-50.*

He submitted that the Claimant has led evidence of possession of the land in dispute through the CW3, his caretaker who was farming and harvesting the economic crops thereon. He further submitted that a party can be in possession through a third party as in the instant case. See *Adewole V Dada (2003) 104 LRCN, Page 1 at 4.*

He further submitted that acts ranging from caretaker ship to harvesting of crops on the land in dispute by the Claimant's agent, the CW3 are acts of possession and ownership. See *Tanka V Echendu (2010-2013) Vol. 6SCJL page 149 at 150. See also Mogaji V Cadbury Fry (Export) Ltd, (1907-1978) vol. 1, Page 356 at 357.*

He therefore submitted that the Claimant has established his title to the land in dispute through credible evidence by leading evidence of purchase, traditional history and acts of long possession and he urged the Court to resolve issue one in the affirmative.

ISSUE TWO:

WHETHER THE OWNERSHIP CLAIM OF THE DEFENDANTS, PARTICULARLY THE 1ST DEFENDANT IS NOT SPURIOUS AND GOLD DIGGING?

On Issue two, counsel submitted that the Defendants' ownership claim to the land in dispute is spurious and gold digging and that the Counter-Claim of the 1st Defendant is not maintainable and sustainable as it amounts to an academic exercise.

He submitted that from the evidence before the Court, particularly on the admission of the 1st Defendant during cross - examination that he had already sold the land in dispute to the 2nd Defendant who in turn sold it to another person, it is obvious that the counter - claim of the Defendant is predicated on a hypothetical and academic pedestal which this Honourable Court has no jurisdiction to entertain and determine. On the meaning of academic suit, he cited the case of *Salik v. Idris (2015) 16 W.R.N. page 1 at P.26 lines 25 -45* and *Moses v. Giadom (2021) 14 NWLR (Pt 1796) page 329 at P. 347 paras C – E*.

He submitted that the 1st Defendant has no cause of action and/or grievances worth ventilating vide his counter-claim since he has no interest in the subject matter of this suit having divested himself of same. On the meaning of cause of Action, he relied on the case of *Adesina v. Airfrance (2022) 8 NWLR (Pt 1833) page 523at Pp. 544-545,paras G-B*.

Furthermore, he submitted that the 1st Defendant has failed to lead cogent and credible evidence to establish his entitlement to the land in dispute. He maintained that the Claimant has been able to establish through credible evidence that he acquired title to the land in dispute through purchase from Oko-Uromi Omoazonmen, the rightful owner of same on the vide a Deed of Transfer/Purchase receipt.

He submitted that the Claimant through the CW3 led evidence to prove that he had been in unbroken and undisturbed possession of the land in dispute for over eight (8) months until the dispute arose and that before him, his vendor was in possession of the land in dispute since he inherited same sometime in June 2009. On effect of long possession, he cited the case of *Iroagbara v. Ufomadu (2009) 30 WRN,page 1 at P.16 lines, 10-15*

He posited that the evidence of the Claimant and the CW3 shows that the Claimant is still in possession of the land in dispute till date and that the CW3 has been harvesting the economic crops on it at the instance of the Claimant. On

whether a party can be in possession through agents or tenants, he cited the case of *Adewole v. Dada (2003) 104 LRCN, Page 1 to 4*.

He submitted that where two parties claim to be in possession, the law ascribes possession to the one with a better title and he cited the cases of *Eki v. Giwa (2007) Vol. 153 LRCN, page 197 at page 215 KF*; *Ojo v. Owoade (2021) LPELR-55870(CA)*; *Nyomi & Anor v. Njoku & Anor (2021) LPELR-55558(CA)*; and *Apena & Anor v. Aleru & Anor (2014) LPELR-23305(SC)*.

On whether there can be concurrent possession to the same piece of land, he referred to the case of *Oyebamiji v. Fabiyi (2003) 12 NWLR Part 834, page 271 at 276* and submitted that the Claimant's act of possession of the land in dispute is exclusive and deserves protection by this Honourable Court.

Counsel submitted that from the totality of evidence before this Honourable Court, the evidence of the Claimant is more credible and reliable than that of the 1st Defendant and he referred to the case of *Agbi v. Ogbeh (2005) 8 NWLR, part 926 at 134 paras B -C*.

Furthermore, counsel submitted that in evaluating evidence of traditional history adduced by both parties, the court is at liberty to have recourse to facts or acts if any, in recent years in order to determine which of the two versions, is more probable. See: *Salawu V Yusuf (2006-2011) Vol. 7 SCJL, Page 100 at 101-102*.

He submitted that from the evidence before the Court, the Claimant has clearly demonstrated that he was not only cultivating the land in dispute shortly before this dispute arose, but was also harvesting the crops thereon through his agent, the CW3 who equally engaged in farming activities on the land in dispute. He submitted that the counter-claim of the 1st Defendant is bare, stale and barren as it cannot be activated to ground any relief worth enforcing. He relied on the following decisions: *Anozia V Attorney General of Lagos State (2023) 2 NWLR Part 1869, Page 545 at P. 555, paras. G*; *United Bank For African V Mabogunje (2022) 14 NWLR Part 1849, Page 99 at Pp.116-117, paras. G-B*.

He submitted that the 2nd Defendant who did not testify or call a single witness has tacitly admitted the evidence of the Claimant and that what is admitted

needs no further proof. See *Capital Oil & Gas Industry Ltd. V Oteri Holdings Ltd (2021) 1 NWLR, Part 1758, Page 483 at P-505, paras,F-G; and Alechenu V Oshoke (2002) F.W.L.R, Part 85,page 281 at 284.*

He submitted that where a party as in the instant case of the 2nd Defendant has been afforded ample opportunity to defend the suit against him and he fails to take advantage of it, he cannot be heard to complain of lack of fair hearing as he would be bound by the outcome of the litigation. See *Okeke V Uwaechina (2022) 10 N.W.L.R Part 1837, Page 173 at P.190, paras. F-H.*

He submitted that the evidence of the Claimant and his witnesses regarding the possessory and ownership rights of the Claimant in respect of the land in dispute was neither challenged nor controverted by the 2nd Defendant. He said that the Court can act on such un-contradicted evidence provided it is credible and he relied on the case of *Adamawa State Ministry of Land and Survey V Salisu (2021) 2 NWLR Part 1759, Page 1 at Pp 29-30, paras. H-D.*

Furthermore, he submitted that the purported acquisition of the land in dispute by the 2nd Defendant from the 1st Defendant who had no valid title to same even after the Claimant who acquired it from the rightful owner was in exclusive possession, is void ab initio and he relied on the case of *Edosa V Ehimwenma (2022) 5 NWLR, Part 1823, Page 215 at P.234, paras. B-E.*

He therefore urged the Court to resolve issue two in the affirmative.

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.

Upon a careful examination of the issues formulated by the learned counsel for the parties, I observed that the 1st Defendant filed a Counter-Claim in this suit so I am of the view that the two issues for determination in this suit are as follows:

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

2) Whether the 1st 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, second, third and fifth means of proof. To wit: proof by

traditional evidence, production of documents of title, acts of ownership and by acts of long possession and enjoyment of the land.

The Claimant's first means of proof is by the production of his alleged document of title. Incidentally, the Claimant's proof by document of title is inseparably linked to his vendor's root of title which is based on the evidence of the traditional history of the land.

Sequel to the foregoing, I will consider the Claimant's proof by his document of title alongside his proof by his evidence of the traditional history of the land.

It is an 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, 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. 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 led evidence of the traditional history of the land to the time when the vendor's grandfather, Pa Ozigho Ojeba allegedly deforested the land in dispute together with other vast parcels of land over one hundred years ago.

The Claimant alleged that his vendor's deceased father, Pa Omoazonmen took possession of the land upon the demise of his father, Pa Ozigho Ojeba but he did not perform the burial rites of Pa Ozigho Ojeba, hence he could not inherit the land. He alleged that owing to the inability of his vendor's father to inherit the properties of his deceased father including the land in dispute, the right of inheritance devolved on one Anenih Elebalulu who was a grandchild to Pa Ozigho Ojeba.

The claimant testified that the said Anenih Elebalulu could not also perform the burial rites of his father, Elebalulu Ozigho and that of his grandfather, Pa Ozigho Ojeba before his death and due to the inability of Anenih Elebalulu to perform the burial rites of his deceased father and grandfather, the right of succession and inheritance of the land in dispute and other properties of Ozigho Ojeba devolved on the Claimant's vendor, Oko-Uromi Omoazonmhen as the eldest grandchild of Ozigho Ojeba who duly carried out the said burial rites of his father and grandfather in June 2009.

The Claimant alleged that after his vendor performed the burial rites of his father and grandfather, Pa Omoazonmen and Pa Ozigho Ojeba in accordance with Esan Native Law and Custom of Efandion Uromi, he inherited the land now in dispute alongside other landed properties of his father and grandfather.

At the trial, the Claimant led evidence to show how he allegedly acquired the land in dispute through purchase from his said vendor, Mr. Oko-Uromi Omoazonmen on the 10th day of July, 2009 vide a Deed of Transfer which was admitted as Exhibit "B" at the trial.

Incidentally, at the trial, the 1st Defendant also led evidence of the traditional history of the land. The 1st Defendant traced the origin of the land to the said late Pa. Elenbalulu Ozigho who allegedly deforested a vast expanse of land including the one in dispute in Uzegua quarters in Efandion Uromi.

He stated that the Claimant's vendor, Mr. Okouromi Omoazonmwun was the son of the late Pa. Omoazonmen Ozigho, the second son of late Pa. Elenbalulu Ozigho and under Esan Native Law and Custom, he is not qualified to inherit the intestate estate of late Pa. Ozigho, the 1st Defendant's ancestor.

The 1st Defendant alleged that he being a direct progeny of the late Pa. Elenbalulu Ozigho, has every right of inheritance to the intestate estate of his forebears, including the land in dispute, above the Claimant's vendor.

The 1st Defendant maintained that given the vendor's position and status in the Ozigho family tree, no person from the Omoazonmen lineage (including the Claimant's vendor) is qualified under Esan Native Law and Custom to inherit the intestate estate of late Pa. Ozigho.

He maintained that his father, Pa. Anenih Elenbalulu, performed all the burial rites of his departed father and grandfather and succeeded to their vast estate situate in Uzegua Quarters, Efandion, Uromi, including the parcel of land now in dispute.

The 1st Defendant alleged that upon the death of his father on the 16th of September, 1998 his eldest son, Mr. Patrick Anenih who ought have succeeded him died childless in 2004, without performing the burial rite of their late father. He alleged that this incident created the opportunity for the 1st Defendant to become the next person in the line of children of their deceased father.

The 1st Defendant alleged that by virtue of his position, in 2007, he performed two burial rites in compliance with Esan Native Law and Custom as applicable to Uzegua Quarters Uromi, to enable him, as the eldest surviving son of his late father, Mr. Michael Anenih Elenbalulu, to inherit his intestate estate.

He alleged that the performance of the two burial rites qualified him to inherit his late father's estate including the land in dispute.

The 1st Defendant maintained that he and the Claimant's vendor (Mr. Okouromi Omoazonmen) never had the same father. He maintained that he and his fore-bears have been in lawful possession of the vast estate including the land in dispute and that the Claimant's vendor's father was never in exclusive possession of the land.

It is pertinent to observe that the Claimant's vendor and the 1st Defendant are from the same family. From the evidence adduced by both, it is evident that this is a matter where the parties were under a bounding duty to adduce credible evidence from bonafide members of their family to substantiate their claims. The Claimant in this suit is not a member of the family, but he tried to lead evidence on the traditional history of the land which the 1st Defendant is seriously challenging.

The Claimant alleged that he derived his title to the land by purchase from one Okouromu Omozoamen who incidentally is a cousin of the 1st Defendant. As the learned counsel for the 1st Defendant rightly pointed, nobody from Okouromu Omozoamen's family came to Court to substantiate the evidence led by the Claimant that his vendor actually inherited the land. The evidence of the Claimant and his witnesses on the family history of succession to property came from persons who are non-members of the family and their evidence amounted to hearsay. The Claimant did not give any reason for his failure to bring witnesses to give direct evidence of whether the said Pa. Anenih Elenbalulu actually failed to perform all the burial rites of his departed father and grandfather and whether the Claimant's vendor actually performed the burial rites of his father and grandfather in order to inherit the land in dispute as alleged by the Claimant. The Claimant's evidence on this salient aspect of his case leaves some gaping gaps which makes his proof by traditional evidence to be palpably weak.

To succeed in proving title through traditional history, the Claimant must prove his title by conclusive and cogent evidence of tradition. The traditional history will succeed on its merit standing alone or fail where such history breaks down

for being unreliable in nature or owing to its own internal contradictions. In order to rely on traditional history, a party must plead and prove the successive persons to whom the land thereafter devolved through an unbroken chain or in such a way that there is no gap which cannot be explained.

See: *AKANBI VS SALAWU (2003) 14 NSCQR 1071 AT 1079; EWO VS. ANI (SUPRA) AT 53-54 AND FALOMO VS. ONAKANMI (2005) 11 WRN 141 AT 170; ADEWUNMI & ORS V. ADETAYO & ANOR (2017) LPELR-42424(CA) (PP. 19-20 PARAS. E).*

The law is that where a Claimant pleads a primary method of establishing title, such as, traditional history and he also pleads other methods of proof such as documents of title, acts of ownership and possession which are dependent on that main method of establishing title, he cannot succeed if he fails to prove that main method of establishing title to land. *ODOFIN VS. AYOOLA (1984) 11 SC 72, OGUNGBEMI VS. ASAMU (1986) 3 NWLR (PT 27) 161, FASORO VS. BEYIOKU (1988) 2 NWLR (PT 76) 263, OLALEYE VS. TRUSTEES OF ECWA (2011) 2 NWLR (PT 1230) 1, GBADAMOSI VS. OKEGE (2011) 3 NWLR (PT 1233) 175, JIYA VS. AWUMI (2011) 4 NWLR (PT 1238) 467. IN LAWAL VS. OLUFOWOBI (1996) 10 NWLR (PT 477); ABDULLAHI V. NUHU (2013) LPELR-22625(CA) (PP. 46-49 PARAS. F)*

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 and by documents of title.

In this suit, the Claimant also attempted to establish his title by acts of ownership and possession. He adduced evidence that immediately after acquiring the land in dispute, he assigned one Faith Omondiale to be the caretaker of the land.

As I have observed above, where the original root of title is defective, the Claimant cannot establish his title by acts of ownership or possession.

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 1st 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 1st 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.

Before I consider the evidence, adduced by the 1st Defendant/Counter-Claimant, I think it is pertinent to reproduce the Counter-Claims.

In his Counter-Claim, the 1st Defendant counter-claimed against the Claimant as follows:

- 1. A Declaration of this Honourable Court that the 1st Defendant is entitled (as against the Claimant/Defendant in the counter claim and his vendor, (Mr. Okouromi Omoazonmen) to a Statutory Right of Occupancy in respect of the disputed parcel of land measuring approximately 100feet by 100feet lying, situate and being off Uromi-Ubiaja Road, Uzegua Quarters,***

Efandion, Uromi; the said land being part of the vast expanse of land the 1st Defendant inherited from his late father, Mr. Michael Anenih Elenbalulu.

2. *A PERPETUAL INJUNCTION restraining the Claimant, his agents, servants and/or privies from further interfering with the said parcel of land now put in dispute.*
3. *The sum of N999, 000.00 (Nine Hundred and Ninety Nine Thousand Naira) being general damages for TRESPASS.*

It is significant to point out that in his pleadings and in the evidence adduced at the trial, the 1st Defendant admitted that he had already sold the land in dispute to the 2nd Defendant who in turn sold it to another person. As a matter of fact, the Deed of Transfer/Receipt of sale between the 1st Defendant and the 2nd Defendant was admitted as Exhibit "A" at the trial.

In his address, the learned counsel for the Claimant forcefully submitted that since the 1st Defendant and the 2nd Defendant have divested themselves of the property, the counter - claim of the 1st Defendant has become a mere academic exercise is predicated which this Honourable Court has no jurisdiction to entertain and determine.

There appears to be some sense in the submission of the learned counsel for the Claimant on this point.

The law is trite that Courts do not act in vain. Courts are urged not to dissipate scarce judicial energy on the consideration of academic, hypothetical or moot issues. See *KOKO V. KOKO (2023) 13 NWLR (PT. 1901) 249 (SC)*; *SOUTH ATLANTIC PET. LTD V. MIN, PET. RESOURCES (2023) 7 NWLR (PT. 1882) 135 (SC)*; *ANI V. EFFIOK (2023) 8 NWLR (PT. 1887) 463 (SC)*; *HAMMANJULDE V. MUBARAK (2023) 9 NWLR (PT. 1889) 211 (SC)* *BABA V. YAHUZA (2023) 11 NWLR (PT. 1895) 243.*

An academic issue is one which would neither confer benefit on nor injure any of the parties but merely propound the law. A suit becomes academic when the questions placed before the Court for determination are no longer live issues in the subject matter of the suit. A suit is academic where it is thereby theoretical,

makes empty sound and of no practical utilitarian value to the plaintiffs even if judgment is given in his favour. If no purpose will be served by an action or appeal or any issue raised in it other than its mere academic interest, the Court will not entertain it. In other words, Courts have no jurisdiction to entertain academic issues. See *LADOJA V. FRN & ANOR (2014) LPELR-22432(CA) (PP. 34-35 PARAS. A-A)*.

Clearly, in view of the admission the 1st Defendant that he has divested himself of the ownership of the land in dispute, any determination of the Counter-Claim of the 1st Defendant against the Claimant will not serve any practical purpose or be of benefit to any person. It will be an academic exercise in futility. The maxim is “*de minimis non curat lex*” (the law does not concern itself with trifles).

Sequel to the above, I hold that the 1st Defendant’s Counter-Claim is dead on arrival. Issue two is resolved against the 1st Defendant.

Having resolved issue one against the Claimant and issue two against the 1st Defendant, I hold that the Claimant’s Claim and the 1st Defendant’s Counter-Claim lack merit and they are hereby dismissed. I make no order as to costs.

Hon. Justice P.A. Akhiero

27/09/24

COUNSEL:

DR. P.E. AYEWOH-ODIASE ESQ -----CLAIMANT

R.E. ESEKHAIGBE ESQ-----1STDEFENDANT/COUNTER-CLAIMANT

