

**IN THE HIGH COURT OF JUSTICE**  
**OF EDO STATE OF NIGERIA**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO,**  
**ON THURSDAY THE 30<sup>TH</sup>**  
**DAY OF JANUARY, 2025**

**BETWEEN:** **SUIT NO. B/197/2014**  
**MRS. VICTORIA WURAOLA AIGBIRHIO .....** **CLAIMANT**  
*(Suing through her Lawful Attorney*  
*Dr. Edwin Ozolua Oseni-Momodu)*

**AND**

- 1. MR. SAMUEL OVBIAGELE OKHAVBEHIME**  
**AIGBIRHIO (Defending through his Lawful**  
**Attorney, Dele Aigbirhio)**
  - 2. THE DEEDS OF REGISTRAR MINISTRY OF**  
**LANDS AND SURVEYS, EDO STATE**
  - 3. THE COMMISSIONER FOR LANDS AND**  
**SURVEYS, EDO STATE.**
- DEFENDANTS**

**JUDGMENT**

In this suit, the Claimant is claiming against the Defendants as follows:

- a. A Declaration that the Claimant is the Owner of the property located at No. 6, Aghimien Avenue, Off Ekenwan Road, Benin City, Edo**

*State which is registered at No. 18 at Page 18, Volume 399 of the Land Registry in Benin City and the Person entitled to a Statutory Right of Occupancy over the said property;*

- b. An Order of Perpetual Injunction restraining the 1<sup>st</sup> Defendant, his Servants, Agents and/or Privies however described from selling, mortgaging, leasing, renting and/or dealing with the said property in any way inconsistent with the rights of the Claimant;*
- c. An Order directing the 1<sup>st</sup> Defendant to render an account of all the rents collected from the said property from November, 1995 till the filing of this action;*
- d. An Order directing the 2<sup>nd</sup> & 3<sup>rd</sup> Defendant to register the said property in the name of the Claimant at the Land Registry, Benin City; and*
- e. General damages of N5, 000,000.00 (Five Million Naira) against the 1<sup>st</sup> Defendant.*

**ALTERNATIVELY**

- i. An Order directing the 1<sup>st</sup> Defendant to refund the sum of 20,200.00 (Twenty Thousand British Pounds) sent by the Claimant;*
- ii. An Order directing the 1<sup>st</sup> Defendant to refund the sum of 2,000 (Two Thousand British Pounds) sent by the Claimant to the 1<sup>st</sup> Defendant on the 23<sup>rd</sup> day of November, 1995 for the legal and registration fee of the said property;*
- iii. Interest in the said sum of money (in paragraphs I and II) above at the bank rate of 20% per annum after judgment until the said sums are totally liquidated by the 1<sup>st</sup> Defendant;and*
- iv. General damages of N5, 000,000.00 (Five Million Naira) against the 1<sup>st</sup> Defendant.*

In this suit, the Defendant also counterclaimed against the Claimant as follows:

- 1. A Declaration that the 1<sup>st</sup> Defendant is the bonafide owner of the House and premises lying, situate and being at No. 6, Aghimien Avenue of Ekenwan Road, Benin City which is Registered as No. 18 at Page 18 in volume 399 of the Land Registry in the office at*

*Benin City is therefore and the only person entitled to a Statutory Right of Occupancy over the said property;*

- 2. An Order of Perpetual Injunction restraining the Claimant, her Agents, Servants or Privies from trespassing into the land of the 1<sup>st</sup> Defendant;and*
- 3. General damages of N5, 000,000.00 (Five Million Naira) against the Claimant.*

**ALTERNATIVELY**

*A Declaration that since the 1<sup>st</sup> Defendant has surrendered all rights to the joint property belonging to both 1<sup>st</sup> Defendant and the Claimant at 126, Admaston Road, Plumstead, SE 18, London where Claimant presently resides due to the fact that the 1<sup>st</sup> Defendant did not press for his financial relief claim thereto. The Claimant is stopped from laying claim to the property known as No. 6, Aghimien Avenue, Off Ekenwan Road, Benin City.*

In proof of his case, the Claimant's Lawful Attorney and one witness testified and the Claimant's case was closed.

From the evidence which she adduced at the trial, the Claimant's case is that initially, the 1<sup>st</sup> Defendant and she were legally married and the marriage was blessed with children.

They lived together in Nigeria until September, 1990 when the Claimant relocated to the United Kingdom to take up employment as a Nurse, while the 1<sup>st</sup> Defendant remained in Nigeria where he was at the time unemployed.

The Claimant alleged that she was responsible for the upkeep and sustenance of the 1<sup>st</sup> Defendant and their children while she was working abroad as a nurse.

She alleged that sometime in 1995, the 1<sup>st</sup> Defendant suggested to the Claimant the need for the family to have a property in Benin City and since he was unemployed at that time, he appealed to the Claimant to send money for the purchase for the property now in dispute.

According to her, consequently, she sent the sum of £20,200 (Twenty Thousand, Two Hundred Pounds) through one Mr. Ayo Bare (C.W.1) to the 1<sup>st</sup> Defendant in November, 1995 for the purchase of the property at No. 6 Aghimien Avenue, off Ekenwan Road, Benin City.

She said that the 1<sup>st</sup> Defendant acknowledged the receipt of the £20,200 (Twenty Thousand Two Hundred Pounds) vide his letter dated 20 November 1995 which was admitted as Exhibit “B” at the hearing.

She alleged that the 1<sup>st</sup> Defendant converted the British pounds she sent to him to Naira bringing the entire sum he received from her to N2,500,000 (Two Million, Five Hundred Thousand Naira) which he paid the sum to Mrs. Ohiwerei and Late Hon. Justice J.W.A Ohiwerei for the purchase of the property at No. 6, Aghimien Avenue, Benin City.

She said that the 1<sup>st</sup> Defendant made them to issue him a receipt for the purchase price in his own name instead of in the name of the Claimant. The Claimant maintained that she was unaware of this fact and only discovered during their divorce suit.

She alleged that the 1<sup>st</sup> Defendant requested for an additional sum of £2,000 (Two Thousand British Pounds) for legal and registration fees of the said property and she sent same to him on the 23<sup>rd</sup> of November, 1995 through one Mr. Ugbo, a friend of the 1<sup>st</sup> Defendant which he acknowledged in his letter to her dated 28th August 1996. The said letter was admitted as Exhibit “D” at the hearing.

The Claimant alleged that unknown to her; the 1<sup>st</sup> Defendant proceeded to register the property in his name without her consent and instructions at No. 18, page 18, in volume 399 of the Lands Registry in Benin City.

According to her, sometime in 2005 after the 1<sup>st</sup> Defendant joined the Claimant in London with their children, they had some irreconcilable differences which culminated in their divorce on the 19th day of January 2009.

She alleged that it was in the course of their divorce proceedings that she became aware that the 1<sup>st</sup> Defendant did not register the said property in her name even though she provided the money for the purchase of the property.

The Claimant alleged that from the year 1995 till this action was filed, the 1<sup>st</sup> Defendant has been collecting rent from the property and appropriating it to himself without rendering anything to her.

She said that she requested the 1<sup>st</sup> Defendant to change the title documents from his name to her name being the lawful owner of the property but he bluntly refused and continued to collect rent from the property hence she instituted this suit.

In defence of this suit and in proof of his Counter-Claim, the 1<sup>st</sup> Defendant's Lawful Attorney testified and closed the 1<sup>st</sup> Defendant's case.

From the evidence which he adduced at the trial, the 1<sup>st</sup> Defendant's case is that he is the lawful owner of the property in dispute.

According to him, sometime in 1964, while schooling in the United Kingdom, he brought the Claimant who was his wife to the United Kingdom and they cohabited together in Newcastle.

He alleged that on the 18th of May, 1972 they jointly purchased the house and premises in which they were both residing at 79, Rothenry Terrace Heaton, Newcastle, Upon Tyne.

He alleged that while he was in England, he worked in various establishments as a Chartered Accountant, earning good and reasonable salary and allowance and provided for the upkeep of the Claimant and their children.

He said that he was able to contribute to his life Insurance Policy Premium and to save a considerable amount of money in his Savings Account.

He said that sometime in 1979, he was employed by New Nigeria Bank Ltd in Nigeria and rose to the position of Assistant General Manager (AGM) Finance. During the period of his employment in Nigeria, the 1<sup>st</sup> Defendant alleged that the Naira was at par with the British Pound and he was sending money to the Claimant and their children in the United Kingdom for their upkeep.

He explained that while in Nigeria, he was living in the house in dispute as a tenant. He said that subsequently the owner of the house Lady (Mrs.) L. A. Ohiwerei, the wife of Hon. Justice J. W. A Ohiwerei, who was his relation, offered to sell the house to him.

He alleged that he negotiated the purchase price with Lady Ohiwerei and they settled for the sum of N2, 500,000.00 (Two Million, Five Hundred Thousand Naira) which was equivalent to £20,000.00 (Twenty Thousand Pounds).

The 1<sup>st</sup> Defendant alleged that their joint property at 79 Rothenry Terrace Heaton, Newcastle, Upon Tyne had long been rented to the University of Newcastle Upon Tyne and the rent was single handedly being collected by the Claimant with the understanding that she pays the proceeds from the rent into their Joint Account.

He alleged that but in addition to the proceeds from rent stated above, he maintained a Life Insurance Policy in London, with Royal London Insurance Company Ltd.

In order to raise funds for the purchase of the house in Nigeria, the 1<sup>st</sup> Defendant allegedly gave a Power of Attorney to the Claimant to enable her collect his life insurance benefit and pay same into their joint account.

He alleged that the Claimant did not show evidence of how much she paid into their account.

He alleged that sometime in the year 1995, the Claimant sent the sum of £20,000.00 (Twenty Thousand Pounds) to him for the purchase of the house.

The 1<sup>st</sup> Defendant alleged that when he went to London on holidays subsequently, the Claimant verbally gave him a breakdown of the sum of £20,000.00 (Twenty Thousand Pounds) sent by her to be as follows:-

- a. That the sum of £10,000.00 (Ten Thousand Pounds) being proceeds from the 1st Defendant's Life Pension insurance Scheme with the Royal London Insurance Company Ltd;
- b. That she took a loan of £10,000.00 (Ten Thousand Pounds) from an undisclosed source.

The 1<sup>st</sup> Defendant alleged that the Claimant did not show evidence that she obtained a loan of £10,000.00 (Ten Thousand Pounds) neither did she show evidence of what she actually collected from the Royal London Insurance Company Ltd on behalf of the 1st Defendant.

He alleged that events later proved that the Claimant had been financially manipulating him for years. He alleged that the Claimant single handedly collected rents for their property at 79, Rothenry Terrace Heaton, Newcastle for 20 (Twenty) years without rendering accounts to him.

He alleged that the Claimant sold their joint property in the United Kingdom and used the proceeds of the sale to purchase a property in her own name.

He alleged that on the 11<sup>th</sup> day of April, 2007 the Claimant gave the 1<sup>st</sup> Defendant a week's Notice in writing to quit their jointly owned property.

Eventually, he instituted Divorce Proceedings against the Claimant at the Bromly County Court in the United Kingdom praying for a dissolution of thier

marriage and the Court dissolved the marriage and made some consequential orders.

The 1<sup>st</sup> Defendant maintains that he purchased the property in dispute with his hard earned money and rightly registered same in his name. He said that the Claimant has never requested him to change the name of the title documents of the property from that of the 1<sup>st</sup> Defendant's name to reflect her name because she is aware that the property belongs to him.

At the close of Defendant's case, this suit was adjourned to enable the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to put up their defence but they never showed up in Court hence they were foreclosed and the suit was adjourned for adoption of final written addresses.

In his final written address, the learned counsel for the 1<sup>st</sup> Defendant *Felix Osa Imasuen Esq.* formulated a sole issue for determination as follows:

***“Whether from the totality of evidence adduced in this case, the Claimant has being able to establish the ownership of the property lying, situate and known as No. 6, Aghimien Avenue, Off Ekenwan Road, Benin City which is registered as No. 18 at Page 18 in Volume 399 of the Land Registry in the office at Benin City, if she is unable to prove her title, the 1st Defendant having proved his title, should he not be awarded ownership of the land.”***

Opening his arguments on the sole issue for determination, the learned counsel enumerated the five methods of establishing ownership of land in Nigeria and relied on the following cases: *PADA V. GALADIMA & ANOR (2017) VOL 273 LRCN Page 6; IDUDUN V OKUMAGBA (1976) 1 NWLR 2000 MOGAGI V CADBURY NIG. LTD (1985) 2 NWLR Pt. 7 393.*

He also referred to the case of *OLUKOYA V ASHIRU (2006) ALL FWLR (Pt 322) 1479 and 1514 paras E-H*, where the Court also stated that another method of proving title to land is ***“by acts of selling, leasing, and renting out all or part of the land or farming on it or a portion of it thereof”***.

He submitted that the onus of proving the ownership of this property in dispute squarely rests on the Claimant and he relied on the case of *ORIANZI V. AG; RIVERS STATE (2017) Vol 271 LRCN page 150 at page 188 & ORS 169 at page 205Z; and PADA V GALADIMA & ANOR (2017) VOL 273 LRCN (supra).*

He referred the Court to the evidence of how the Claimant allegedly made arrangements for the payment of the purchase of the property while the Defendant was unemployed and she was a nurse in the United Kingdom.

The learned counsel questioned why the Claimant never obtained the Deed of Transfer after the purchase until many years later when they petitioned for divorce. He also wondered why their predecessors in title to wit: Mrs. L.A. Ohiwerei and Justice J.W.A. Ohiwerei, being learned persons, issued the Deed of Transfer in the name of the 1<sup>st</sup> Defendant when they were aware that the 1<sup>st</sup> Defendant is not the owner of the property.

He maintained that they issued two receipts of payment in the name of the 1<sup>st</sup> Defendant, because they know and believe he is the real owner of the property otherwise, the receipt would have been issued to the Claimant.

He submitted that the Claimant slept on her right all these years and equity aids the vigilant and not the indolent. He maintained that the Claimant is only trying to lay claim to the property because she was the wife of the 1<sup>st</sup> Defendant at the time the property was acquired.

He referred the Court to the evidence of how the 1<sup>st</sup> Defendant who was a sitting tenant of MRS. L. A. OHIWEREI, his predecessor in title to the property, negotiated and purchased the property for the sum of N2,500,000.00 (Two Million, Five Hundred Thousand Naira).

He maintained that part of the funds for the purchase was the sum of 20,000 (Twenty Thousand Pounds) being the proceeds from the liquidation of his life insurance policy with the Royal London Insurance Company Ltd. He said that the 1<sup>st</sup> Defendant gave the Claimant a Power of Attorney to collect the proceeds from the insurance company.

He said that the Claimant never denied claiming the insurance proceeds on behalf of the 1<sup>st</sup> Defendant and he cited the following cases on the effect of unchallenged or uncontroverted evidence: *UZO V NNALIM (2000) FWLR (pt) at 1258 and ADEKANYA V COMPTROLLER OF PRISON (2000) FWLR (Pt) at 1258.*

Counsel posited that all the Exhibits in this case point to the fact that the 1<sup>st</sup> Defendant is the owner of the property in issue. He said Exhibit "C" clearly showed that the property was acquired by the 1<sup>st</sup> Defendant in his name and from his earnings. He submitted that oral evidence cannot discredit the contents



of a document and he relied on the case of ***IBRAHIM V. ADBULLAHI & ORS (2019) LPELR – SC 465/2019 (Pp 11 -12 paras E-A)***.

He posited that the Claimant never pleaded fraud in this case and she was aware that the 1<sup>st</sup> Defendant was the owner of the house and never questioned or asked for the title documents of the property until 2009 during their divorce proceedings.

Learned counsel referred the Court to Exhibit “K” which is a letter dated 26/03/2008 written by HUDGELL & PARTNERS, the Claimant’s Attorney, in paragraph 8 which states as follows:

***“the Respondent’s wife seeks to retain the Property at 126, Admaston road in consideration of which she will make no claim against the property in Nigeria and on the basis of a clean break”.***

He submitted that it is clear that from all the evidence of the Claimant, she has not been able to prove title or ownership. He therefore urged the Court to look at the case of the Defendant/Counterclaimant.

He said that the Claimant cannot be allowed to probate and reprobate in the face of Exhibit “K”. He therefore urged the Court to dismiss the claim of the Claimant.

He submitted that the 1<sup>st</sup> Defendant has proved his title and ownership of the land by production of documents of title, which is in his name and by the production of the Certificate of Occupancy granted by the state which is over 39 years old.

Furthermore, he posited that the 1<sup>st</sup> Defendant has been in over 30 years of possession and enjoyment of the property, which is a prima-facie evidence of ownership. He relied on the cases of ***EBE UKA & ORS IROLO & ORS (2002) 11 NSCOR pg 311 Pt page 336*** and ***SULEIMAN V BAHAGO and ORS (2024) 21 WRN Page 128 Pt at page 140 at 178.***

In his final written address, the learned counsel for the Claimant, ***Ebosele Okhifo Esq.*** formulated three issues for determination as follows:

- 1) Whether the 1<sup>st</sup> Defendant has any defence to this action;***
- 2) Whether the Claimant has not proved her case by documentary and oral evidence to be entitled to judgment; and***

- 3) *If the court in the unlikely event holds that the 1<sup>st</sup> Defendant/Counter Claimant has a defence, whether the 1<sup>st</sup> Defendant has proved a better title.*

Thereafter, the learned counsel argued the three issues seriatim.

**ISSUE 1:**

***WHETHER THE 1<sup>ST</sup> DEFENDANT HAS ANY DEFENCE TO THIS ACTION***

Learned counsel submitted that the 1<sup>st</sup> Defendant has no defence to this action having not met with the condition precedent before filing his statement of Defence and Counter-claim. He posited that in the instant case, the Claimant filed her writ of summons and statement of claim on the 10<sup>th</sup> April, 2014 and served on the 1<sup>st</sup> Defendant on the 25<sup>th</sup> day of November 2014 by order of this court.

He said that the Court has the power to look at its records and he relied on the case of *NNPC V. TIJANI (2007) ALL FWLR (PT344) @ 129 @ 130 ratio 1.*

He posited that after service on the 1<sup>st</sup> Defendant on the 10/4/2014, Defendant had 42days within which to file his defence but he filed same on the 5<sup>th</sup> of December 2016, two years after the service of claimant's statement without the leave of the Court.

He submitted that it is mandatory to comply with the rules of court and relied on the following cases: *CHARITY LUBA CONSULTANCY V. F.R.N. (2016) All FWLR (PT817) @ 696 @699 r 2; CHUKWUOGOR V. CHUKWUOGOR (2007) ALL FWL (PT 349) @1154 @1161 @7; and A.C.B PLC V. NWANKWO (2007) ALL FWLR (PT 366) @ 776 @ 781 r8.*

He submitted that the Court cannot look at the defence and counter-claim of the 1<sup>st</sup> Defendant as there is nothing before court having failed to comply with the mandatory rules of court and he relied on *ORAKUL RESOURCES LTD V. N.C.C (2007) ALL FWLR (PT 390) @ 1482 @ 1486 R3 D.Y.S TROCCA VALSEIA & CO. VS. OSAGHARE (2008) ALL FWLR (PT 413 @ 1313 @ 1320 r 15; DAYO ADELEYE MINING AND CONSULTING CO LTD V. NORTH-SOUTH EXTRACTIVE CO. LTD (2009) ALL FWLR (PT 492) @ 1127 @ 1139 r 9.*

He therefore urged the Court to resolve issue one in favour of the Claimant.

**ISSUE TWO:**

***WHETHER THE CLAIMANT HAS NOT PROVED HER CASE BY DOCUMENTARY AND ORAL EVIDENCE TO BE ENTITLED TO JUDGEMENT.***

Counsel submitted that the Claimant has proved her case. He referred to the evidence of her Lawful Attorney who was able to show how she sent money the sum of £20,200.00 (Twenty Thousand, Two Hundred Pounds) in 1995 through the C.W.1, for the purchase of the disputed property.

He said that the 1<sup>st</sup> Defendant acknowledged the receipt of the said £20,200 in his letter dated 20/11/1995 to the claimant. He said that an additional sum was sent to the 1<sup>st</sup> Defendant to perfect the registration and documentation of the purchase of the House in dispute. He referred the Court to Exhibits B and D.

He said that instead of using the Claimant's name as the lawful purchaser of the property, the 1<sup>st</sup> Defendant put his name as the buyer.

He posited that the Claimant's exhibits support her oral evidence and where oral evidence is supported by documentary evidence, then court should give probative value to it. He relied on the case of ***WAYO V. J.S.C. BENUE STATE (2006) ALL FWLR (PT301) @66; AKINBISADE V. STATE (2007) ALL FWLR (PT 344) @ 17@19 r1.***

He said that the evidence adduced by the Claimant was unchallenged and uncontradicted particularly as it relates to paragraph 11 of his statement of oath which state as follows:

***“That upon my return to Nigeria in November 1995, I gave the £20,200 (Twenty Thousand, Two Hundred Pounds) to the 1<sup>st</sup> Defendant as well as relaying my niece's wish that the property be bought in her name to him”.***

He submitted that it is trite law that where evidence is unchallenged and uncontradicted as in this instant case, courts are enjoined to act on it and give it probative value and he relied on the cases of ***IKALAMA V. DEREKOMA (2008) ALL FWLR (PT433) @ 1376 @ 1380 r6:*** and ***UBA PLC V. MUSTAPHA (2004) I NWLR (PT 855) @ 443.***

Counsel submitted that by the production of Exhibits B and D, the Claimant has established one of the ways of proving title to land to wit: evidence of

payment of the purchase price. He cited the cases of *IDUNDUN V. OKUMAGBA (1976) SC. 227*; and *UDEZE & ORS V. NWOSU & ORS (2008) 154 LRCN @ 110*. We submit with due respect that this issue should be resolved in favour of the claimant and declare her the lawful owner of the property.

**ISSUE 3:**

***IF THE COURT IN THE UNLIKELY EVENT HOLDS THAT THE 1<sup>ST</sup> DEFENDANT/COUNTER CLAIMANT HAS A DEFENCE, WHETHER THE 1<sup>ST</sup> DEFENDANT HAS PROVED A BETTER TITLE.***

He posited that the Claimant has established that the 1<sup>st</sup> Defendant never had any job/employment as at the time of the purchase of the disputed land hence he was not in any position to have raised the money to purchase the property. Moreover he posited that the sum of £20,200 was given to 1<sup>st</sup> Defendant by the Claimant to purchase the disputed property on her behalf.

He said that the 1<sup>st</sup> Defendant in complete betrayal of the trust of the Claimant is only laying claim to the disputed property because he fraudulently put his name in the title documents without more.

Learned counsel referred to Exhibit K, which stated as follows:-

***“The Respondent’s wife seeks to retain the property at 126, Admaston road in consideration of which she will make no claim against the property in Nigeria and on the basis of a clean break”.***

He said that the above statement is a clear indication that the 1<sup>st</sup> Defendant is aware that the Claimant has a stake in the property in dispute. He said that by instituting this suit, the Claimant has shown that she did not give up her interest in the property in dispute.

He submitted that it is trite law that once a party is able to prove that he has a better title than the person with the statutory right of occupancy, the right of occupancy should be revoked and issued in the name of the rightful owner. We submit that the statutory right of occupancy ought to be and should be declared invalid and same issued to the claimant being the legitimate owner of the disputed property having provided the purchase price for the property.

He urged the Court to resolve this issue in favour of the Claimant.

Upon receipt of the Claimant's final written address, the 1<sup>st</sup> Defendant's counsel filed a Reply on Point of Law. In the said Reply, he submitted that an unregistered receipt is not one of the ways of establishing title to land and he relied on the case of *Suleiman vs. Bahago & Ors. (2024) 21 WRN 123*.

He maintained that the five ways of proving title to land as enumerated in the case of *Idundun vs. Okumagba Supra*, does not include proof by an unregistered receipt. He urged the Court to hold that the Claimant has failed to prove her title to the land.

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 parties.

Upon a careful examination of the issues formulated by the learned counsel for the parties, I observed that the 1<sup>st</sup> 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 her title to the land in dispute on the balance of probabilities? and*
- 2) *Whether the 1<sup>st</sup> 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 her 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 second means of proof. To wit: proof by the production of documents of title.

The Claimant's means of proof is by the production of her alleged documents of title. Incidentally, the Claimant and the 1<sup>st</sup> Defendant are laying claim to the property by documents of title.

At the trial, the Claimant led evidence to show how she allegedly acquired the property in dispute through purchase from late Lady Ohiwerei. She alleged that she sent the sum of £20,200 (Twenty Thousand, Two Hundred Pounds) through the C.W.1 to the 1<sup>st</sup> Defendant in November, 1995 for the purchase of the property now in dispute.

She said that the 1<sup>st</sup> Defendant converted the British pounds she sent to him to Naira bringing the entire sum he received from her to N2,500,000 (Two Million, Five Hundred Thousand Naira) which he paid to Mrs. Ohiwerei and Late Hon. Justice J.W.A Ohiwerei for the purchase of the property at No. 6, Aghimien Avenue, Benin City.

She said that the 1<sup>st</sup> Defendant made them to issue him a receipt for the purchase price in his own name instead of in the name of the Claimant and that she only discovered this during their divorce proceedings.

She further alleged that she sent an additional sum of £2,000 (Two Thousand British Pounds) to the 1<sup>st</sup> Defendant for the payment of legal and registration fees of the said property and the 1<sup>st</sup> Defendant acknowledged receipt of same in

his letter to her dated 28th August 1996 which was admitted as Exhibit “D” at the hearing.

From the evidence adduced at the hearing, the Claimant appears to be relying on the following documents in proof of her title to the property:

- (i) Purchase receipt marked as Exhibit “C”;
- (ii) Letter dated the 20th day of November, 1995 marked as Exhibit “B”; and
- (iii) Letter dated the 28th day of August, 1996 marked as Exhibit “D”.

Upon a careful examination of the purchase receipt (Exhibit “C”), it is evident that the receipt bears the name of the 1<sup>st</sup> Defendant. The name of the Claimant is not mentioned at all in Exhibit “C”. The Claimant has alleged that the 1<sup>st</sup> Defendant dubiously made the Vendors to insert the name of the 1<sup>st</sup> Defendant instead of her name on the said receipt. That is an allegation of fraud which is a criminal offence which must be proved beyond reasonable doubt even in a civil suit. See *Section 135(1) of the Evidence Act 2011*, which provides as follows:

***“If the commission of a crime by a party in any proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt.”***

See the following cases: *Nwobodo V. Onoh (1984) NSCC 1 @ p. 17, ACN V. Lamido (2011) 3 LRECN at 296; Benson Ikokwu V. Enoch Oli (1962) 1 All NLR 194; Godwin Nwankwere V. Joseph Adewunmi (1967) NMLR 45.*

In the instant case, the Claimant made some efforts to prove that she sent the sum of £20,200 (Twenty Thousand, Two Hundred Pounds) to the 1<sup>st</sup> Defendant in November, 1995 for the purchase of the property in her name. She consistently maintained that the 1<sup>st</sup> Defendant acknowledged receipt of the money by his two letters which were admitted as Exhibits “B” and “D”.

I have read the two exhibits and I discovered that the 1<sup>st</sup> Defendant actually acknowledged receipt of the purchase price for the property. However, there is nothing in the two exhibits to prove that the property was meant to be purchased by the 1<sup>st</sup> Defendant on behalf of the Claimant.

In defence to this suit, the 1<sup>st</sup> Defendant has consistently maintained vide his evidence that he was not an unemployed person as the Claimant has asserted but that he is a Chartered Accountant who worked in the United Kingdom and Nigeria in high profile positions that enabled him to cater for the Claimant and their children and gave him some savings and benefits from his life insurance policy.

In the evidence before this Court, apart from the *ipse dixit* of the Claimant's witnesses that the 1<sup>st</sup> Defendant was an unemployed man, the Claimant has not led any cogent evidence to contradict the 1<sup>st</sup> Defendants assertions that he earned good money which he invested while he was working in the United Kingdom and in Nigeria.

The attempts of the Claimant to use oral evidence to contradict the contents of the purchase receipt is not tenable in law. It is settled law that oral evidence cannot be allowed to prevail or overcome clear documentary evidence. See *Udo Vs Eshiet (1994) 8 NWLR (Pt. 363) 482; F.B.N Plc. Vs M.O. Nwadialu Sons Ltd (2016) 18 NWLR (Pt. 1543) 1 at 10; and Dickson Vs Slyva (2017) 8 NWLR (Pt. 1567) 167.*

See also *Section 128 of the Evidence Act 2011* which provides:-

***"128. (1) When a judgment of a Court or any other judicial or official proceeding contract or any grant or other disposition of property has been reduced to the form of a document or series of documents, no evidence may be given of such judgment or proceeding or of the facts of such contract, grant or disposition of property except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under this Act, nor may the contents of any such document be contradicted, altered, added to or varied by oral evidence."***

In the case of *MICHAEL DAN UDO v. CHIEF C. UDOM ESHIET (1994) 8 NWLR (Pt. 363) 482 AT 503 paras. B-D where NIKI TOBI, JCA (later JSC)* of blessed memory had this to say:

***"The position of the law is that parole evidence cannot or could not be allowed to contradict documentary evidence. The rationale is clear. A document is not capable of telling a lie unless by direct human intervention. A human being is more prone to telling lies in Court, as he sees the trend of evidence."***

Furthermore, it is settled law that generally a purchase receipt does not convey title or legal estate in a landed property to the purchaser. See the case of *ENADEGHE V. EWEKA (2014) LPELR-24479(CA) (PP. 9 PARAS. D).*

Furthermore, an unregistered document such as the purchase receipt can be admitted in evidence as a receipt or evidence of money transaction. However such a document cannot be used to prove title. However, where it is coupled with possession in appropriate cases, it may give rise to an equitable interest in the land. See the cases of *Ishola V Oluwalogbon (2013) LPELR-22206(CA) 48; Enadeghe V Eweka (2014) LPELR-24479(CA) 9, D-E; Ero V Tinubu*



*(2012) LPELR-7869(CA) 25-26, D-B; Ayorinde V Fayoyin (2001) FWLR (Pt. 75) 483.*

From the foregoing, I hold that the Claimant has failed to prove her title to the property in dispute through any valid document of title. 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> Defendant/Counter-Claimant to lead credible and cogent evidence to establish his counter-claims.

In proof of his Counter-Claim, the 1<sup>st</sup> Defendant led evidence of how he brought the Claimant who was his wife to the United Kingdom and they cohabited together while he worked in various establishments as a Chartered Accountant, earning good and reasonable salary and allowance and provided for the upkeep of the Claimant and their children.

He said that he was able to contribute to his life Insurance Policy Premium and to save a considerable amount of money in his Savings Account.

He narrated how he was employed by New Nigeria Bank Ltd in Nigeria and rose to the position of Assistant General Manager (AGM) Finance and was sending money to the Claimant and their children in the United Kingdom for their upkeep.

He explained that while in Nigeria, he was living in the house in dispute as a tenant. He said that subsequently the owner of the house Lady (Mrs.) L. A. Ohiwerei, the wife of Hon. Justice J. W. A Ohiwerei, who was his relation, offered to sell the house to him.

He alleged that he negotiated the purchase price with Lady Ohiwerei and they settled for the sum of N2, 500,000.00 (Two Million, Five Hundred Thousand Naira) which was equivalent to £20,000.00 (Twenty Thousand Pounds).

In order to raise funds for the purchase of the house in Nigeria, the 1st Defendant allegedly gave a Power of Attorney to the Claimant to enable her collect his life insurance benefit and pay same into their joint account.

He alleged that sometime in the year 1995, the Claimant sent the sum of £20,000.00 (Twenty Thousand Pounds) to him for the purchase of the house.

From my findings under Issue One, it is evident that the Claimant is not the owner of the property in dispute. There is evidence that the purchase receipt Exhibit "C" is in the name of the 1<sup>st</sup> Defendant. Furthermore, there is evidence that from the time the house was purchased until now, the 1<sup>st</sup> Defendant has been in physical and constructive possession of the property.

It is settled law that one of the ways of proving title to land is by possession of the land. Possession is ninth-tenth of proof of title to land. Where possession is established, it is good title against the whole world except the person with a better title to the land, of which the Claimant is not, having failed to prove the better title which she claimed. See the case of *Iseogbekun V. Adalakun (2013) 2 NWLR (Pt. 1337) 140 @ p. 178*. See also *section 143 of the Evidence Act, 2011*.

Furthermore, on the proof by documents of title it is settled law that although a receipt per se is not sufficient proof of title, where it is coupled with possession in appropriate cases, it may give rise to an equitable interest in the land. See the cases of *Ishola V Oluwalogbon (2013) LPELR-22206(CA) 48*; *Enadeghe V Eweka (2014) LPELR-24479(CA) 9, D-E*; *Ero V Tinubu (2012) LPELR-7869(CA) 25-26, D-B*; *Ayorinde V Fayoyin (2001) FWLR (Pt. 75) 483*.

In the instant case, I hold that the 1<sup>st</sup> Defendant has established his title to the property in dispute by his receipt of purchase coupled with his physical and constructive possession of the property.

Apart from seeking a declaration of title, the 1<sup>st</sup> Defendant is also seeking injunctive relief and damages.

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

Since the 1<sup>st</sup> Defendant's title to the land has been established, I hold that he is entitled to a perpetual injunction to restrain the Claimant, her agents, privies or servants from any further acts or trespass.

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

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

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

The quantum of damages will depend on the evidence of what the Claimant has suffered from the acts of the Defendant.

In the instant case, the 1<sup>st</sup> Defendant did not lead any evidence of the quantum of losses which he suffered from the acts of the Claimant. However, it is usual in cases such as this, where the Claimant is unable to quantify his losses, for the Court to award nominal damages.

Issue two is therefore resolved in favour of the 1<sup>st</sup> Defendant/Counter-Claimant.

***On the whole, the Claimant's Claims are dismissed and the 1<sup>st</sup> Defendant's Counter-Claims succeed and are granted as follows:***

- 1) A Declaration that the 1st Defendant is the bonafide owner of the House and premises lying, situate and being at No. 6, Aghimien Avenue of Ekenwan Road, Benin City which is Registered as No. 18 at Page 18 in volume 399 of the Land Registry in the office at Benin City is therefore and the only person entitled to a Statutory Right of Occupancy over the said property;***
- 2) An Order of Perpetual Injunction restraining the Claimant, her Agents, Servants or Privies from trespassing into the land of the 1st Defendant; and***
- 3) General damages of N1, 000,000.00 (One Million Naira) against the Claimant.***

***I award the sum of N200, 000.00 (Two Hundred Thousand Naira) as costs in favour of the 1<sup>st</sup> Defendant.***

***Hon. Justice P.A. Akhiero***

***30/01/25***

**COUNSEL:**

***EBOSELE OKHIFOH ESQ -----CLAIMANT***

***F.O.J. IMASUEN ESQ-----1<sup>ST</sup>DEFENDANT/COUNTER-CLAIMANT***