

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 MONDAY THE 3RD

DAY OF FEBRUARY, 2025

BETWEEN:

SUIT NO. B/193/2021

MR. JOHN A. OSARUMWENSE CLAIMANT

AND

1. MR. LUCKY OGIEMWANYE

2. MR. NOMWENGHO IGHIWIYISI

3. MR. EMMANUEL OGIEMWANYE

4. MR. AGBONGHAE E. PEPPE-REST

DEFENDANTS

JUDGMENT

In this suit by his amended statement of claim dated the 18th day of April, 2023 and filed on the 19th day of April, 2023 the Claimant is claiming against the Defendants as follows:

- 1) A Declaration that the Claimant remains the rightful owner in exclusive possession of all that piece or parcel of land measuring 150**

feet by 100feet (One Hundred and Fifty Feet by One Hundred Feet) delineated in survey plan No: Kp.8130 dated 9-1-89 covering an areas of 1,393.01m², bounded by Survey beacon numbers PY 9265, PY 9266, PY 9267 and PY 9268 lying and situate at Egba Village, Ward 34/F, along Benin /Abraka Road, Benin City, covered by a Statutory Certificate of Occupancy No. 4f2a2-v025e-nb490-u025e-nb790-rw473, file No: EDL 60201 which instrument is duly registered as No. 41 at page 1 volume 38 of the Certificate of Occupancy Digital Register in the EDOGIS Registry office of Edo State on the 5th day of July, 2921;

- 2) A perpetual injunction restraining the Defendants, their agents, servants and or privies from carrying out or continue to carry out any construction work on the claimant piece or parcel of land or further entry or committing any further or other acts of trespass over the said land; and*
- 3) The sum of N10, 000,000.00 (Ten Million Naira) only being general damages for acts of trespass carried out by the Defendants on the said parcel of land.*

The Defendants' extant statement of defence is their 2nd Further Amended Joint Statement of Defence dated the 16th day of February, 2023.

In proof of his case, the Claimant testified and called two witnesses. The Claimant's case is that on the 16th day of December, 1974, he applied for a piece of land measuring 200feet by 200feet lying and situate at Egba Village, Ward 34/F, Idogbo Area, Benin City, vide an Application for Allocation of Building Plot dated 16/12/1974, through the Egba Village Plot Allotment Committee to His Royal Highness Akenzua II C.M.G, the Oba of Benin.

He alleged that being satisfied with the Egba Community bush inspectors and pointers reports that the said piece of land was dispute free, the Plot Allotment Committee endorsed the application and forwarded it to the Oba of Benin for his approval and same was approved by the Oba on the 25th day of January, 1975. A copy of the Oba's Approval was admitted in evidence as Exhibit "A".

The Claimant alleged that he has been in exclusive possession of the said land ever since until the year 1985 when he sold part of the said land measuring

100feet by 200feet and 50feet by 100feet to one Mr. Richard Ehigiator and his wife.

He alleged that he commissioned a licensed surveyor, late T.K. Kpeji who surveyed the remaining part of his land measuring 150feet by 100feet in the year 1989. The original copy of the survey plan was admitted in evidence as Exhibit "B" at the hearing.

The Claimant alleged that he applied for a Certificate of Occupancy before he instituted this suit and same has been granted to him by the Edo State Government. The certificate of occupancy was admitted as Exhibit "C1".

The Claimant stated that he has been carrying on a sawmill business from 1990 on the said piece of land till date and he gave part of the remaining piece of land to rent paying tenants. He gave the names of some of his tenants such as Mr. Augustine Ogbomo, Mr. Henry Imasuen and Mr. Odiase Robinson.

According to the Claimant, sometime in the year 2016, the 1st to 3rd Defendants started encroaching on his land at a time when the Egba Village Community Development Association was headed by the 2nd Defendant who claimed that they have shared his piece of land amongst themselves and that they can only allow him to remain on part of the land measuring 65feet by 200feet.

He said that he reported the conduct of the 1st to 3rd Defendants to the Enogie of Egba in the same year 2016 and the Enogie told him to take any action against them if they continued their acts of trespass on his piece of land.

He alleged that in the year 2018, the 1st Defendant encroached further into his land and destroyed his old petrol station building structure and the palm kernel factory belonging to his tenant which resulted in his petition against the 1st to 3rd Defendants to the Private Property Protection Committee.

He said that the 1st to 3rd Defendants have put a hold on their acts of trespass since the year 2018 when they were invited by the Private Property Protection Committee to produce their document to the said land which they never produced till date.

However, he said that since the year 2018 after one of his tenant (Mr. Augustine Ogbomo) wrote a statement in his favour to the Private Property Protection

Committee, the 1st to 3rd Defendants have been threatening Mr. Augustine Ogbomo and his family.

He said that the 4th Defendant started laying claim to part of his piece of land sometime on the 31st day of January 2021 when he served his tenant (Mr Augustine Ogbomo) thirty days quit notice. The Notice to quit dated 31/1/21 was admitted in evidence as Exhibit "E".

The Claimant maintained that the litigation survey plan of the Defendants does not represent the true position of his land now in dispute because the Benin/Abraka Road was constructed years back before the Claimant's Survey Plan No: k p. 8130 dated 9-1-89 was drawn and the surveyor could not have surveyed the road as posited by the Defendants' surveyor.

He alleged that the Edo State Geographic Information Service (EDOGIS) staff inspected and measured his land and charted his survey plan No: k p. 8130 dated 9-1-89 before he was granted the Statutory Certificate of Occupancy and none of them told him that his survey plan No: k p. 8130 dated 9-1-89 falls on the road as suggested by the Defendants' surveyor.

He said that in response to the litigation survey plan No. SNL/ED/LID006/2021 filed by the Defendants in this suit, he commissioned surveyor James Amadin Osazuwa who prepared a litigation survey Plan No. JAO/ED2022/04L for him to disprove the Defendants' surveyor's assertions. The said Survey Plan No. JAO/ED/2022/O4L was admitted as Exhibit "H".

The Claimant alleged that in Suit No: B/188/80, the 2nd Defendant's father was adjudged to be an unreliable and untruthful witness and the Court refused to apply the decision in the case of Owie v. Ighiwi.

He maintained that the Defendants are land grabbers and land speculators.

In defence of this suit the Defendants called one witness, a surveyor; the 1st and 2nd Defendants testified and they closed their case.

In their evidence, the Defendants stated that the land in dispute was never at any time recommended by the valid and authentic Plot Allotment Committee chaired by Late Pa. Solomon Ighiwi for approval for the Claimant and that the Oba never approved the land for him.

They maintained that the Plot Allotment Committee to which the Claimant purportedly made his application was not the valid Plot Allotment Committee for Egba Village.

They alleged that valid Plot Allotment Committee for Ward 34/F Egba Village Idogbo Area which was constituted and approved by Oba Akenzua II, the then Oba of Benin, comprised of the father of the 2nd Defendant, Pa. Solomon Ighiwi and some other prominent members of Egba Community.

They alleged that in 1976, when the authority of the Plot Allotment Committee Chaired by Pa. Solomon Ighiwi was challenged, the Palace of the Oba of Benin wrote to the Police confirming that the Plot Allotment Committee Chaired by Pa. Solomon Ighiwi was the valid Plot Allotment Committee Ward 34/F Egba Village Idogbo Area. A copy of the Letter from the palace of the Oba of Benin dated 15th November, 1976 was admitted as Exhibit "L" at the hearing.

They alleged that no other Plot Allotment Committee was constituted and approved by the Oba of Benin for Egba Village.

Furthermore, they alleged that the issue of the valid Plot Allotment Committee of Egba Village was judicially determined by the Supreme Court in the case of **Owie v. Ighiwi (2005) 5 NWLR (pt.917) 184 at pages 205-206 paras. B-B; 223 paras. B-E**. The Defendants tendered the certified true copy of Judgment of the Supreme Court in **SC/257/2000** which was admitted as Exhibit "M".

The Defendants alleged that the signature on the document put forward by the Claimant purporting to be the signature of the Oba of Benin is a forgery as the Oba never signed the document. They stated that when one Omoregbe Uzama, the supposed Chairman of the illegal Plot Allotment Committee, that purportedly recommended the land of the Claimant, was sued by one Mr. Felix Ojo in Suit No: B/188/80, he (Omoregbe Uzama) told the court that there was no Plot Allotment Committee in Egba and that was why he had no Oba's approval over the land in dispute.

They said that the Court gave judgment in favour of Mr. Felix Ojo who had an approval from the Plot Allotment Committee headed by Mr. Solomon Ighiwi. The Defendants tendered a Certified True Copy of the judgment in Suit No. B/188/80 which was admitted as Exhibit "N".

Furthermore, they alleged that one Mr. James Igbinere, a supposed member of the illegal Plot Allotment Committee that purportedly recommended the Application of the Claimant herein to the Oba, has denounced the said illegal Plot Allotment Committee in a letter dated 5th July, 1990, where he affirmed that the Plot Allotment Committee chaired by Mr. Solomon Ighiwi was the only Plot Allotment Committee that existed in Egba. The Certified True Copy of the said letter dated 5th July, 1990 was admitted in evidence as Exhibit “O”.

They maintained that the document being paraded by the Claimant was forged and they enumerated the particulars of the forgery.

The Defendants alleged that the said Omoregbe Uzama could not claim to be exercising the powers of the Enogie of Egba in 1974 because there was no Enogie in Egba at that time, as the previous Enogie died without a male child.

They alleged that Omoregbe Uzama, who is not a descendent of the past Enogie, only became the Enogie of Egba in 1979 following a contest of several persons. The Defendants sought to tender a copy of the letter dated 25th of November, 1992 written by Oba Erediauwa to the Assistant Inspector-General of Police, Zone 5, Benin City which purportedly confirmed the date of installation of Omoregbe Uzama as the Enogie of Egba to be 1979. However, the Court rejected the document because it contravened the provisions of the *Evidence Act, 2011*.

At the hearing, the Defendants maintained that the Certificate of Occupancy which was obtained by the Claimant with his defective Oba’s Approval cannot cure his defect in title.

They maintained that the 2nd Defendant is the owner of a large parcel of land measuring 100 feet by 200 feet which he became seised of by virtue of a transfer for valuable consideration from his late father Pa. Solomon Ighiwi. The Deed of Transfer dated 9th June, 2004 was tendered as a receipt of payment and admitted as Exhibit “P”.

They alleged that the parcel of land measuring 100 feet by 200 feet was approved for the 2nd Defendant’s late father Pa. Solomon Ighiwi by the Oba Akenzua II after same was certified as free and recommended by the Egba Plot Allotment Committee Ward 34/F with the 2nd Defendant’s father Solomon

Ighiwi as Chairman, to the Oba for approval. The Oba's Approval dated 23rd January, 1975 was admitted in evidence as Exhibit "Q".

The Defendants alleged that the land of the 2nd Defendant shared boundary with the Rubber Plantation of the 1st and 3rd Defendants' father (which has been cut down by the 1st and 3rd defendants) on one side; on the other side by an earth road as boundary between 2nd Defendant's land and Egba Secondary School; and to the south-east, by an oil mill.

According to them, when the land was allocated in Egba for development purposes, a portion of the 1st and 3rd Defendants' father's Rubber Plantation measuring 200 feet by 300 feet was reserved for and allocated to the father of the 1st and 3rd Defendants as was the usual practice in Benin Kingdom; while the remaining part of the Rubber Plantation was allocated to other persons.

They alleged that the 1st and 3rd Defendants, being the persons who helped their father in planting and tapping the Rubber trees, their father gave each of them a portion measuring 50 feet by 200 feet from the 200 feet by 300 feet allocated and approved for him by the Oba of Benin.

They said that the gifts made to the 1st and 3rd Defendants by their father were customary gifts under Benin Custom made in the presence of some family members.

They said that between 2001 and 2002, the 1st Defendant laid a building foundation for 2 units of 3 Bedroom flats on the land given to him which he raised to D.P.C. level.

They alleged that the 3rd Defendant transferred his entire parcel of land measuring 50 feet by 200 feet to the 4th Defendant for valuable consideration.

The Defendants maintained that the Claimant was never in possession of any portion of their land and that there has never been a petrol Station on any part of the land in dispute. They challenged the Claimant to produce any license from the relevant agency of government for the establishment and operation of such Petrol Station on any portion of the land in dispute.

Furthermore, they maintained that the land which the Claimant allegedly sold to Mr. and Mrs. Richard Ehigiator does not fall within the Defendants' parcels of land.

They also maintained that the Claimant never operated any sawmill on the land in dispute and the challenged him to produce any licence from the relevant Government Agency authorizing the operation of such sawmill on the land in dispute.

The Defendants alleged that the said Mr. Augustine Ogbomo, Henry Imasuen and Odiase Robinson are persons the Claimant is using as a front in his attempt to encroach on their land.

They said that in 2016 the said Mr. Augustine Ogbomo was asked to vacate the 2nd Defendant's land when he attempted to put up a temporary shed thereon and he left the land.

Furthermore, that in 2021, the said Mr. Augustine Ogbomo became a tenant of the 2nd Defendant on the 2nd Defendant portion of the land in dispute. The Bank Statement of the 2nd Defendant showing the payment of the sum of N 60, 000:00 (Sixty Thousand Naira) by the said Mr. Augustine Ogbomo to the 2nd Defendant on 4th March, 2021, was admitted as Exhibit "R".

They alleged that the Claimant was only able to place persons on the land in dispute after obtaining an order of interlocutory injunction and he is liable to account to the Defendants for all the rent he collected from the alleged tenants. They said that the 2nd Defendant has not collected any further rent after the order of interlocutory injunction.

The Defendants alleged that the Survey Plan No. K. P. 8130 and the Litigation Survey Plan No. JAO/ED2022/04L put forward by the Claimant are inaccurate.

According to them, Survey Plan No. K. P. 8130 shows clearly that the land referred to in the survey is different from the land in dispute. They explained that on Survey Plan No. K. P. 8130, the Claimant's land was shown to be on the right side of the Benin-Abraka Road when coming from Abraka; whereas in the Claimant's Litigation Survey Plan No. JAO/ED2022/04L, the Claimant's land

was shown to be on the left side of the Benin-Abraka Road when coming from Abraka.

They stated that the Defendants' land in dispute is actually on the left hand side of the Benin-Abraka Road when coming from Abraka.

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

In his final written address, the learned counsel for the Defendants, *M.O. Okhwarobo Esq.* formulated two issues for determination as follows:

- 1) *Whether from the evidence before this Honourable Court, the Claimant has established his title to the land in dispute to be entitled to the reliefs sought; and*
- 2) *Whether the mere procuring of a certificate of occupancy over the land in dispute can confer the Claimant title or cure the defect in his title.*

Thereafter, he argued the two issues seriatim.

ISSUE ONE:

Whether from the evidence before this Honourable Court, the Claimant has established his title to the land in dispute to be entitled to the reliefs sought.

Opening his arguments, learned counsel submitted that in a case of declaration to title to land, the Claimant must succeed on the strength of his own case and not on the weakness or even admissions of the Defendant and he relied on cases of *Ogah v. Ikpeazu (2017) 17 NWLR (pt.1594) 229 at pages 336-337 paras. G-A Ratio 6*; and *Maranro v. Oyegoke (2022) LPELR 61108 (SC) at pages 31 – 32, Paras. B – A*.

He enumerated the five methods of proving title to land in Nigeria and relied on case of *Gaba v. Tsoida (2020) 5 NWLR (pt. 1716) 1 at pages 20-21, paras. E – A, Ratio 1*.

He posited that in the instant suit, the Claimant relied on the Benin Customary grant by the Oba of Benin and tendered an alleged Oba's Approval dated 16/12/74, Exhibit A, as his root of title.

He said that the Defendants challenged the said Exhibit A as a document fraudulently procured as same did not originate from the authentic and approved Plot Allotment Committee in Egba Community. He referred the Court to the evidence of the Defendants in paragraphs 3 – 8 of the 1st Defendants Statement on Oath filed on 10th of May, 2021; as well as paragraphs 2 - 14 of the 2nd Defendant's Further and Better Statement on Oath filed on 16th of February, 2023.

He maintained that the Defendants backed up their challenge with credible documents which are as follows:

1. Exhibit L, which is a letter dated 15th November, 1976, confirming that the Plot Allotment Committee headed by Solomon Ighiwi has the approval of the Oba of Benin. He also referred to Exhibit M, which is the Judgment of the Supreme Court in *Owie v. Ighiwi*, which held that the only valid and approved Plot Allotment Committee for Egba Village was that headed by Solomon Ighiwi;
2. Exhibit N, the C.T C of High Court Judgment in Suit No. B/188/80, to show that the said Chief Omoregbe Uzama that allegedly led the Plot Allotment Committee that issued the Claimant with Exhibit A (Claimant's Approval) in 1974, in his evidence in Court years later, denied the existence of a Plot Allotment Committee in Egba Village;
3. Exhibit O, which is a letter dated 5th of July, 1990, where one James Igbinere, a member of the illegal Plot Allotment Committee and a signatory to the Claimant's Approval, disclaimed their illegal Committee and affirmed the one headed by Solomon Ighiwi as the authentic Plot Allotment Committee for Egba Village, approved and recognized by the Oba of Benin.

Learned counsel posited that the Supreme Court laid to rest the issue of the authentic Plot Allotment Committee in Egba Community in the case of *Owie v. Ighiwi (2005) 5 NWLR (PT.917) 184 at page 205 Paras. C-E*, where the Apex Court held that the Solomon Ighiwi Plot Allotment Committee was the only valid Committee recognized by the Oba of Benin. He posited that Exhibit A, which the Claimant relies upon as his document of approval, does not bear the name of Solomon Ighiwi so it did not originate from the valid Plot Allotment Committee of Egba Village and he urged the Court to so hold.

He submitted that the Claimant has failed to prove his title to the land so his claim should be dismissed and he relied on the decision of the Supreme Court in the case of *Odi & Ors v. Iyala & Ors. (2004) LPELR- 2213 (SC) at Page 28, Paras. B – C* and the case of *Shehu v. Torotoroma & Ors. (2021) LPELR – 53243 (CA) at Page 23, Paras. A – E*.

Furthermore, he submitted that it is settled law that where a party fails to prove his root of title, he cannot turn round to rely on possession and he relied on the cases of *Ngene v. Agbo & Anor. (2000) LPELR – 1987 (SC) at pages 29 – 30, Paras. E – A*; *Owhonda v. Ekpechi (2003) LPELR – 2844 (SC) at page 15, Para. C* and *Okhwarobo & Ors. v. Aigbe (2002) LPELR – 2449 (SC) at pages 32 – 33, Paras. F – E*.

Again, learned counsel submitted that the Claimant has the burden to prove with certainty and precision, the identity, size and location of the land he claims and he relied on the case of *Okochi & Ors. v. Animkwoi & Ors. (2003) LPELR – 2455 (SC) at Page 12, Paras C – E*.

He submitted that the Claimant's evidence as to the location of the land is contradictory. He said that at paragraph 36 (1) of his Amended Statement of Claim, he claimed as follows:

“ a Declaration that the Claimant remains the rightful owner in exclusive possession of all that parcel of land measuring 150 feet by 100 feet (One Hundred and Fifty feet by One Hundred feet) delineated in the Survey Plan No: k p. 8130 dated 9-1- 89....”

He posited that the said **Survey Plan No: k p. 8130 dated 9-1- 89** admitted as **Exhibit B**, situated the land covered by the survey on the **right hand** side of the Benin Abraka Road when proceeding from Abraka to Benin; whereas the land in dispute is on the left **hand side** of the Benin Abraka Road when proceeding from Abraka to Benin.

He referred the Court to the Evidence of the CW1, Surveyor James Amadin Osazuwa under cross examination on 19/9/2022, where he testified as follows:

“The Claimant showed me the Survey Plan prepared by Surveyor Kpeji KP 8130, Exhibit B. when proceeding from Abraka to Benin n the Benin-Abraka Road, the land is on the right...”

*“When I went to the land it was the Claimant that took me there when I went to prepare Exhibit H. The land I surveyed is on the left hand side when coming from Abraka. **The position of the land in Exhibit H is different from the one in Exhibit B...**”*

He said that the Claimant under cross examination on 2/6/22 stated:

*“I know the land in dispute very well. When coming from Abraka, the land is on the **left hand side...**”*

Counsel posited that the oral evidence of the Claimant and his Litigation Survey Plan, Exhibit H both contradict his documentary evidence, Exhibit B, the Property Survey Plan, as to the location of the land in dispute.

He submitted that where the evidence of a party are contradictory, the Court cannot pick and choose, but is enjoined to reject the contradictory evidence and he relied on the case of *Zakarai v. Muhammed (2017) 17 NWLR (Pt.1594)181 at page 243, paras. B – C, Ratio 14* and *Oke & Ors. v. Akinsoyinu (2019) LPELR- 48853 (CA) at page 26, Para E.*

Counsel reiterated that where a Claimant fails to prove the Identity of the land, the Claim must be dismissed and he relied on the case of *Udoye v. Ezenwabude & Anor (2015) LPELR- 25882 (CA) at Pages 15 – 16, Paras. E – D.*

Counsel submitted that the Claimant’s evidence in this suit is completely unreliable for the following reasons:

1. The Claimant claimed in Paragraph 8 of his Amended statement of Claim that he paid the colossal sum of N 10, 0000.00 in 1975 for the land and failed to produce any receipt of such payment;
2. The Claimant claimed in Paragraph 9 of his Amended statement of Claim that he established a petrol station on the land in 1981, but he could not produce any permit from the relevant government agency to carry on such business or any evidence that he purchased bulk petroleum product for retail;

3. The Claimant claimed in Paragraph 10 of his Amended statement of Claim that he sold a part of the land he acquired to one Mr. Richard Ehigiator and his wife but he failed to produce any evidence of such conveyance;
4. The Claimant claimed in Paragraph 13 of his Amended statement of Claim that he operated a sawmill on the land. He did not produce any evidence of such operation of sawmill;
5. The Claimant claimed in Paragraphs 14-17 of his Amended statement of Claim, that he has tenants on the land in dispute, but he could not produce any tenancy agreement, receipt issued evidencing receipt of rent from the alleged tenants;
6. The Claimant claimed in Paragraphs 18-21 of his Amended statement of Claim that video CD produced by one Ejueyitchie Richie, the CW2, showed some of his tenants on the land. Under cross examination, the said Ejueyitchie Richie, the CW2, admitted he does not know the name of the community where he was taken to make the Video recording and did not know the names of the persons he met there and never saw their receipts for payment of rent;
7. The transcription of the Video CD, Exhibit I, as shown in paragraph 7 of the Claimant's Additional statement on Oath filed on 19th April, 2023 is not accurate.

In conclusion, he submitted that the Claimant has failed to prove his title to the land in dispute.

Addressing the Court on the Defendant's case, counsel posited that the Defendants traced their root of title to the valid Plot Allotment Committee for Egba Village, Chaired by Solomon Ighiwi.

He referred the Court to the evidence of the 1st Defendant who tendered Exhibit K, which is the Oba's Approval obtained by their late father dated 4th November, 1977.

He said that the 1st Defendant testified on how their late father by way of customary gift, transferred 50 feet by 200 feet each to him, the 3rd Defendant and some of his other children in the presence of some family members.

He said that the 1st Defendant testified that between 2001 and 2002, he constructed 2 units of 3 bedrooms on his portion, which he raised to DPC Level. He said that the structures are still on his land and was reflected in the Litigation Survey Exhibit J.

He said that the 2nd Defendant also and tendered a number of Exhibits among which is the Oba's Approval dated 23rd of January, 1975, Exhibit Q, by which his late father acquired the parcel of land measuring 100 feet by 200 feet; and that the said parcel of land was transferred to the 2nd Defendant through a transfer for valuable consideration vide a Deed of Transfer admitted as Exhibit P.

He said that the 2nd Defendant also testified that he has a tenant on his land that pays rent to him and he tendered Exhibit R which is his Bank Statement of Account.

Learned counsel pointed out that on the face of Exhibits K and Q, the signature of Solomon Ighiwi appeared to show that the approvals were from the authentic Plot Allotment Committee of Egba Village.

He urged the Court to hold that the Defendants have established a better title than the Claimant.

ISSUE TWO

Whether the mere procuring of a certificate of occupancy over the land in dispute can confer the Claimant title or cure the defect in his title.

Counsel posited that the Claimant procured a Certificate of Occupancy over the land in dispute when matter was already pending in court in an attempt to cure his defective title.

He said that it is settled law that one cannot put something on nothing. He posited that when a person without title to land procured a Certificate of Occupancy, it would avail him nothing because the Certificate of Occupancy cannot cure his defect in title and he relied on the cases of ***Olohunde & Anor. v. Adeyoju (2000) LPELR – 2586 (SC) at Pages 30 – 31, Paras. E – B; Onilari v. Sulaimon (2018) LPELR – 49711 (CA) at Pages 23 – 24, Paras. E – F*** and

Boye Industries Ltd. & Anor. v. Sowemimo (2009) LPELR – 8858 (CA) at pages 5 – 6, Paras. E – C.

He submitted that the Certificate of Occupancy, Exhibit C1 cannot confer any title or interest on the Claimant since the Claimant had none in the first place. He urged the Court to follow the decision of the Supreme Court in the case of *Oluhunde & Anor. v. Adeyoju (2000) LPELR – 2586 (SC) at Pages 30 – 31, Paras. E – B* set aside the Certificate of Occupancy.

He submitted that the undertaking to pay damages to the Defendants made by the Claimant when he obtained an Order of Interlocutory Injunction to restrain the Defendants from entering the land in dispute, should be taking into account.

Finally, he urged the Court to dismiss the suit with substantial costs.

In his final written address, the learned counsel for the Claimant, *L.I. Aiyudubie Esq.* formulated a sole issue for determination as follows:

“Whether or not on the preponderance of evidence, the Claimant has led credible evidence before the Court to be entitled to the reliefs sought from the court?”

Opening his arguments, the learned counsel submitted that the Claimant has led credible evidence on the preponderance of evidence to be entitled to the reliefs sought from the court as per his claim.

He said that in proof of his case, the Claimant testified, tendered Exhibits **A to I** and called two witnesses.

He enumerated the five methods of proving title to land as enshrined in the case of *IDUNDUN & ORS V. OKUMAGBA (1976) 9-10 SC. 224 @ 227.*

He also referred to the case of *NNRUAMA & ORS V. EBUZOEME & ORS (2013) Vol.221 LRCN (pt.1) at page 268PEE*

The learned counsel reproduced the Claimant’s evidence in proof of his case and urged the Court to act on the Claimant’s unchallenged and uncontroverted evidence before it. He referred the Court to the cases of *BURUTOLOU V. YEIBAKE (2015) ALL FWLR, Pt.771, Pg.1534, R.2, pp.1545, paras. C-E* and

ODUTOLA V. ECO BANK NIG. PLC (2023) 1 NWLR, Pt.1864, Pg.79, R.2, Pp.93-94, paras.H-B.

He posited that out of extra caution, the claimant pleaded more than one of the five methods by which title to land may be proved.

He said that he led cogent, credible and conclusive evidence of acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference of true ownership of the land in dispute. He referred to the Claimant's evidence in paragraphs 7,8,9,11,12 and 13 of his written statement on Oath dated the 11th day of February, 2022, paragraphs 17,21,23,24,26,27,28,30,32 and 36 of his written statement on Oath dated the 13th day of May,2022, paragraph 2 of the claimant's written statement on Oath dated the 18th day of April, 2023, Exhibits "B" & "B1" (Survey plan No:Kp.8130 dated 9-1-89 and Certified True Copy of survey plan No: Kp.8130 dated 9-1-89), Exhibit "D" (Petition to Private Protection Committee dated 17th day of August, 2018) and Exhibit "T" (V.C.D showing the land in dispute, the features and the Claimant's tenants thereon).

He submitted that from the foregoing evidence, the Claimant has proved his case on the preponderance of evidence and he urged the Court to so hold.

He submitted that the Defendants failed to prove their allegation that Exhibits A was not duly authenticated and executed as required by law. He said that the Defendants admitted both in their pleadings and evidence that the 1st and 3rd Defendants' father signed Exhibit A before he later renounced his membership of the Plot Allotment Committee which issued Exhibit A to the Claimant.

He said that the 1st and 3rd Defendants are now challenging the Claimant's title which their father (**SAMUEL OGIEMWANYE**) and other members of the Plot Allotment Committee allocated to the Claimant in the year 1975, before their father renounced his membership.

On the purported gifts, counsel posited that the Defendants did not adduce evidence from witnesses who witnessed the making of the gift to the 1st and 3rd Defendants. He said that there was no evidence of any actual handing over of the land to the 1st and 3rd Defendants in the presence of witnesses and the acceptance by them of the gift. He referred the Court to the case of

ENADEGHE V. EWEKA (2015) ALL FWLR, Pt.795, R. 4, @p.340, paras. D-F where the Court held that there must be actual handing over of the land to the donee in the presence of witnesses and the acceptance by him of the gift.

He also relied on the case of ***JIBRIL V. NDATSHU (2024) 1 NWLR, Pt.1920, Pg.507, R.7, @P.529-530, Paras. H-E.***

He urged the Court to hold that based on the aforesaid authorities, the alleged gift of land to the 1st and 3rd Defendants by their late father was invalid.

He said that the Defendants pleaded Exhibit “K” (1st and 3rd Defendants’ father’s Oba’s Approval) but there is no evidence that their 1st and 3rd father ever applied for the land and there was no recommendation made by the plot allotment committee for the alleged plot of land.

He submitted that the Oba’s approval without more is not enough to hold that a valid title to land has been acquired under Benin Customary law and he relied on the case of ***FINNIH V. IMADE (1992) 7 LRCN 117.(SC)*** where the Supreme Court held that all the conditions precedent to the Oba’s approval must be satisfied for a valid title to exist.

He also relied on the cases of ***SAMUEL AGBONIFO V. AWERIOBA (1988) 1 NWLR, Pt.70 p.325*** and ***ADBIYI V.DASILVA (2019) All FWLR, (PT.993) P.354, RATIO 18, @P.414; Paras. B-E.***

Learned counsel referred to the evidence of the Defendants’ surveyor and submitted that the Defendants’ description of their land is fraught with inconsistencies. He submitted that a party will not be allowed to present evidence which are inconsistent with the pleadings and he relied on the case of ***NAVY CAPTAIN OLUFEMI PEARSE (RTD) VS. JINADU & ANOR (2017) LPELR-505 12 (CA).***

Addressing the Court on the issue of the authentic Plot Allotment Committee of Egba Community, learned counsel referred to the case of ***IGHIWIYISI V. IGBINERE (2016) ALL FWLR, Pt.819, Pg.1056, pp.1070- 1074, paras. A-D*** where he alleged that the Appeal Court held that the 2nd Defendant’s father’s claim was based on contradictory evidence of his application and approval on the disputed land.

He said that the Defendants did not prove the serious allegations of forgery and fraud against the Claimant as required by law and he relied on the case of *ABDULAZEEZ V. STATE (2023) 14 NWLR, Pt.1904, Pg. 293, R.4, pp.315, paras. E-F.*

He submitted that the failure of the Defendants to lead evidence beyond reasonable doubt to prove that Exhibit A was forged by the Claimant shows that Exhibit A is valid and authentic and he urged the Court to so hold.

He submitted that the Defendants' claim in their final written address, that the claimant did not produce any receipt to show such payment of N10, 000 in 1975 is an afterthought because the Defendant never joined issues with the Claimant as regards the payment of N10, 000 in 1975 in their pleadings and same goes to no issue and he urged the Court to discountenance such evidence. He relied on the case of *ABUBAKAR V. INEC (SUPRA) R.12*

In response to the Defendants' counsel's submission final that the Claimant could not produce any permit from the relevant government agency to operate a mini petrol station on the land in dispute, he posited that the wreckage of the petrol station building was still visible in Exhibit I. Furthermore, he said that the Defendants did not deny paragraph 24 of the Claimant's Consequential amended reply to the Defendants' further amended joint statement of defence and paragraph 23 of claimant's written statement on oath that the 2nd Defendants, father was the Claimant's regular customer who bought petrol from the Claimant's petrol station.

Counsel posited that the fact that the C.W 2 does not know the name of the community where he carried out the video recording and the names of the Claimant's tenants on the land in dispute does not vitiate the fact that it was the land in dispute and the Claimant's tenants that formed the content of Exhibit I as Exhibit I was further confirmed by the 1st and 2nd Defendants under cross examination that they saw the Claimant on the land in dispute in Exhibit I and all the tenants' names mentioned by the Claimant in his pleading were not challenged by the Defendants under cross examination. He relied on the case of *DANIEL V. INEC (2015) ALL FWLR, Pt.789, Pg.993, R14, pp.1028, paras.C,* on the effect of an admission.

On the alleged contradictions on the Claimant's evidence as to the location of the land, he posited that the Claimant gave copious explanation of the technical error in the Claimant's property survey plan as regards the location of his land in dispute in his pleadings, particularly paragraph 36 of the Claimant's consequential amended reply to the Defendants' further amended joint statement of defence and paragraph 35 of the claimant's written statement on oath dated the 13th day of May, 2022 and paragraphs **7(i) and (ii) and 8** of the claimant's witness (JAMES AMADIN OSAZUWA) written statement on oath dated the 13th day of May, 2022.

He posited that the explanations of the expert witness was never controverted nor challenged by the Defendants both in their pleadings and written statements on oath and was not also impeached by the Defendants under cross examination, but was only supported by the Defendants' witness (SYVESTER ISIDAHOME) a registered surveyor who is also an expert on the 31st day of January, 2024 admitted under cross examination that no surveyor can survey an express road except there is a technical error.

He relied on the case of *ADELEKE V. OYETOLA (2023)11 NWLR, Pt.1894, Pg.71, R.20, Pp.120-121, Paras. F-C* on the importance of the evidence of an expert witness.

On the submission that the Certificate of Occupancy was obtained after the suit was filed, learned counsel posited that it is clear from the contents of Exhibit C which is the Claimant's **Application Form** for Statutory Right of Occupancy, that the application was received on the 24th day of December, 2020 before the 4th Defendant served the Claimant's tenant Exhibit "E & G" on the land in dispute.

Counsel referred to Exhibits "E, F and G" which showed clearly that **MR. AUGUSTINE OGBOMO** has always been the Claimant's tenant on the land in dispute and he urged the Court to so hold.

Finally, he urged the Court to grant the Claimant's Claims.

Upon receipt of the Claimant's address, the learned counsel for the Defendants filed a Reply on points of law.

His Reply on points of law are mainly a rehash of his previous arguments.

I have carefully examined the evidence in this suit together with the submissions of the learned counsel for the parties. Upon a careful examination of the issues formulated by learned counsel for the parties, I observed that the Defendants did not file any Counter-Claim in this suit so I am of the view that the sole issue for determination in this suit is: ***whether the Claimant has proved his case on the preponderance of evidence to warrant the judgment of this Court in his favour?***

I will now proceed to resolve the sole issue for determination.

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. Udejaja (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, third, and the fifth means of proof. To wit: proof by the production

of documents of title; by acts of ownership; and by acts of long possession and enjoyment of the land.

In proof of his ownership of the land by his documents of title, the Claimant led evidence of how on the 16th day of December, 1974, he applied for a piece of land measuring 200feet by 200feet lying and situate at Egba Village, Ward 34/F, Idogbo Area, Benin City, vide an Application for Allocation of Building Plot dated 16/12/1974, through the Egba Village Plot Allotment Committee to His Royal Highness Akenzua II C.M.G, the Oba of Benin.

He alleged that the Plot Allotment Committee endorsed the application and forwarded it to the Oba of Benin for his approval and same was approved by the Oba on the 25th day of January, 1975. A copy of the Oba's Approval was admitted in evidence as Exhibit "A".

He alleged that he commissioned a licensed surveyor, late T.K. Kpeji who surveyed the remaining part of his land measuring 150feet by 100feet in the year 1989 and the original copy of the survey plan was admitted in evidence as Exhibit "B" at the hearing.

The Claimant alleged that he applied for a Certificate of Occupancy before he instituted this suit and same was been granted to him during the pendency of this suit. The certificate of occupancy was admitted as Exhibit "C1".

Thus, the Claimant's documents of title are the Oba's Approval (Exhibit "A") and the Certificate of Occupancy (Exhibit "C1").

In this suit, the Defendants have seriously challenged the Claimant's documents of title on the following grounds:

1. The Plot Allotment Committee to which the Claimant purportedly made his application was not the valid Plot Allotment Committee for Egba Village;
2. They alleged that in 1976, when the authority of the Plot Allotment Committee Chaired by Pa. Solomon Ighiwi was challenged, the Palace of the Oba of Benin wrote to the Police confirming that the Plot Allotment Committee Chaired by Pa. Solomon Ighiwi was the valid Plot Allotment Committee Ward 34/F Egba Village Idogbo Area. A copy of the Letter

from the palace of the Oba of Benin dated 15th November, 1976 was admitted as Exhibit “L” at the hearing;

3. The issue of the valid Plot Allotment Committee of Egba Village was judicially determined by the Supreme Court in the case of **Owie v. Ighiwi (2005) 5 NWLR (pt.917) 184 at pages 205-206 paras. B-B; 223 paras. B-E**. The certified true copy of Judgment of the Supreme Court was admitted as Exhibit “M”;
4. The signature on the document put forward by the Claimant purporting to be the signature of the Oba of Benin is a forgery as the Oba never signed the document;
5. When one Omoregbe Uzama, the supposed Chairman of the illegal Plot Allotment Committee, that purportedly recommended the land of the Claimant, was sued by one Mr. Felix Ojo in Suit No: B/188/80, he (Omoregbe Uzama) the Court gave judgment in favour of Mr. Felix Ojo who had an approval from the Plot Allotment Committee headed by Mr. Solomon Ighiwi. The Certified True Copy of the judgment was admitted as Exhibit “N”; and
6. One Mr. James Igbinere, a supposed member of the illegal Plot Allotment Committee that purportedly recommended the Application of the Claimant to the Oba, later denounced the said illegal Plot Allotment Committee in a letter dated 5th July, 1990, where he affirmed that the Plot Allotment Committee chaired by Mr. Solomon Ighiwi was the only Plot Allotment Committee that existed in Egba. The Certified True Copy of the said letter was admitted in evidence as Exhibit “O”.

It is settled law that the Oba's approval is the first step to be taken but, not the only one to establish title in Bini Customary Law. In addition, it is important to prove how the approval was obtained, in this case, by the Claimant.

The Oba of Benin is the only authority competent under Bini Customary Law to make allocation or grant of Bini lands in or outside Bini city under the same law, all Bini lands are communal property of the entire Benin people and the legal estate in such lands is vested and resided in the Oba as trustee for the Benin people. The application of such transfer is usually made to the appropriate plot allotment committee having jurisdiction over the land in question. Thereafter recommendations of the applications are made by the

relevant Allotment committee to the Oba of Benin. The endorsement of the Oba of his approval on the grantee's written application, duly recommended by the relevant and appropriate plot Allotment committee, then transfers to the purchaser or grantee the plot of land involved. These conditions were laid down by the Supreme Court as conditions to be fulfilled by a party who relies on the Oba's approval. See the case of *AKHIGBE V. AIGBEZE (2017) LPELR-45656(CA)(PP. 18-19 PARAS. E-E)* and *OSAGHAE V. AMADASUN (2014) LPELR-23332(CA) (PP. 26-27 PARAS. B-B)*.

In the instant case, the Defendants have seriously contended that the Plot Allotment Committee that purportedly processed the Claimant's Oba's Approval was not the authentic Committee. They relied heavily on the Judgment of the Supreme Court in in the case of *Owie v. Ighiwi (2005) 5 NWLR (pt.917) 184 at pages 205-206 paras. B-B; 223 paras. B-E* which was admitted as Exhibit "M".

In the said case, which is also reported in LPELR as *SAMSON OWIE v. SOLOMON IGHIWI (2005) LPELR-2846(SC)*, the apex Court stated inter-alia as follows:

“This is why there was no need to call for evidence from the Oba's palace more so, that the evidence before the trial court was clear on the issue and the lower court affirmed the findings on them and which I unhesitatingly uphold. The trial court further found that by exhibit "E" a letter which was written by DW3 James Igbidere,(underlining, mine) the said DW3, admitted in the said letter that there was only one plot allotment committee in Egba recognised by the Oba's palace and that plot allotment committee is the one chair-manned by the respondent. The trial Judge after satisfying himself by the pieces of evidence adduced before him on the authority of exhibit E, concluded that exhibit 'E' emanated from DW3 even though the witnesses denied the same. The learned trial Judge rightly found as a fact too, that DW3 was not a credible witness to be relied upon because the same witness had testified in an earlier proceeding, viz suit No.B/104/83 and charge No.B/25C/86 vide exhibit 'K' and "L", that there was no allotment committee in Egba village. It is for this reason that I agree with the respondent's submission that only one allotment committee was recognised in Egba village by the Oba of Benin,

namely, the one headed by the respondent as rightly found by the trial court and affirmed by the Court of Appeal.”

From the above decision of the Supreme Court, it is evident that the Chairman of the authentic Plot Allotment Committee for Egba Village at that time was one Solomon Ighiwi. As the Defendants have rightly contended, in the Claimant’s purported Application and Approval (Exhibit “A”), the name of the said Solomon Ighiwi is conspicuously absent. The first name on Exhibit “A”, is that of one Omoregbe Uzama who is alleged to be the Chairman of the illegal Plot Allotment Committee,

Furthermore, as the Defendants rightly established by their evidence, on Exhibit “A”, there is the signature of one James Igbidere, a supposed member of the illegal Plot Allotment Committee that purportedly recommended the Application of the Claimant to the Oba. It is in evidence that he later denounced the said illegal Plot Allotment Committee in a letter dated 5th July, 1990, where he affirmed that the Plot Allotment Committee chaired by Mr. Solomon Ighiwi was the only Plot Allotment Committee that existed in Egba. The Certified True Copy of the said letter was admitted in evidence as Exhibit “O”. Incidentally, in the Supreme Court judgment in the case of ***SAMSON OWIE v. SOLOMON IGHIWI (2005) LPELR-2846(SC)***, the apex Court corroborated the evidence of the Defendants when they stated inter-alia as follows:

“The trial court further found that by exhibit "E" a letter which was written by DW3 James Igbidere,(underlining, mine) the said DW3, admitted in the said letter that there was only one plot allotment committee in Egba recognised by the Oba's palace and that plot allotment committee is the one chair-manned by the respondent.”

Sequel to the foregoing, I hold that the valid Plot Allotment Committee for Ward 34/F Egba Village Idogbo Area is the one which was constituted and approved by Oba Akenzua II, the then Oba of Benin, comprising of the father of the 2nd Defendant, Pa. Solomon Ighiwi and some other prominent members of Egba Community.

From the foregoing, the Defendant effectively adduced sufficient evidence to prove that the Claimant’s purported Oba’s Approval was procured from a Plot

Allotment Committee that was declared invalid by the apex Court in their aforesaid judgment.

From the foregoing, it is apparent that the Claimant's root of title which is his Oba's Approval is fundamentally defective.

In further proof of his title in this suit, the Claimant also relied on his Certificate of Occupancy which was admitted as Exhibit "C1".

The position of the law is that even though the certificate of occupancy raises a presumption of title to land, it is not conclusive evidence of any right to valid title in favour of the grantee. It is, at best, only a prima facie evidence of such right or title. A certificate of occupancy without more may in appropriate cases be effectively challenged and rendered invalid, if a better title is found to exist. See the following cases: *ORIANZI V. A.-G., RIVERS STATE (2017) 6 NWLR (PT. 1561) 224 (SC)*; *OTUKPO V. JOHN (2012) 7 NWLR (PT. 1299) 357 (SC)*; and *BAC ELECTRICAL CO.LTD V. ADESINA (2020) 14 NWLR (PT. 1745) 548 (SC)*.

In the instant case since the Claimant's root of title is defective, it is apparent that the Certificate of Occupancy which is founded on the defective Oba's Approval is bound to collapse. It is trite law that one cannot put something on nothing and expect it to stand, it will certainly collapse. See *Macfoy v. UAC (1961) 3 WLR 405 at 1409*. In *Macfoy's case (supra)*, Lord Denning was reported to have said: "*If an act is void, then it is in law a nullity, it is not only bad but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without much ado, though it is sometimes convenient to have the Court to declare it to be so.*"

From the foregoing, it is apparent that the Claimant cannot rely on the Certificate of Occupancy issued to him in respect of the land in dispute.

From the foregoing, I hold that the Claimant has failed to prove his title by the production of any valid document of title.

I will now consider the other methods of proof adopted by the Claimant in this suit. The Claimant also relied on proof by acts of ownership and by acts of long possession and enjoyment of the land.

It is trite and settled law that acts of possession without satisfactory root of title amounts to trespass. See *Nruamah vs. Ebuzoeme* (2007) All FWLR Pt. 347, pg. 723; *Aiyeola vs. Pedro* (2014) 13 NWLR Pt. 1424, pg. 409 SC; and *Enang vs. Effere* (2007) All FWLR Pt. 345, pg. 346 at 350, paras. C-D.

Long possession is not enough to establish title unless such possession is of such a nature as to oust the title of the true owner by acquiescence. See the case of *THOMAS V. HOLDER 12 WACA 78, DA COSTA V. IKOMI* (1968) 1 ANLR 394. Long possession can only be used to defeat a claim for declaration of title and trespass and not to establish a claim for declaration of title and damages for trespass against the true owners.

Ordinarily, in a claim for declaration of title such as this where the Defendant did not file a counter claim, the burden is heavier on the Claimant to prove his title to the land in dispute. The Defendant certainly has no duty at all to prove his title to the land in dispute. See: *Adekaibi v. Jangbon* (2007) All FWLR (Pt. 383) 152 at 160 (2007) 24 WRN 45 at 57; *Elias v. Disu* (1962) All NLR (Pt. 1) 214 at 220 (1962) 1 SCNLR 361; *ONOVO & ORS V. MBA & ORS* (2014) LPELR-23035(SC) (PP. 73 PARAS. B).

From the foregoing authorities, I hold that the alleged acts of possession by the Claimant through his alleged activities on the land cannot establish his title against the Defendants in this suit.

On the whole I hold that the Claimant has failed to establish his title to the land in dispute by any of the known methods of proof. The sole issue is resolved against the Claimant.

Having resolved the sole issue against the Claimant, I hold that this suit lacks merit and it is dismissed with N200, 000.00 (Two Hundred Thousand Naira) costs in favour of the Defendants.

Hon. Justice P.A. Akhiero
03/02/25

COUNSEL:

L.I.AIYUDUBIE ESQ -----CLAIMANT

M.O.OKHUAROBO ESQ-----DEFENDANTS