

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 TUESDAY
THE 25TH DAY OF MARCH, 2025.

BETWEEN:

SUIT NO. B/1043/2022

MRS. DOROTHY AIWERIYE ENOMA

(SUING FOR AND ON BEHALF OF

LATE MADAM BEATRICE EHIOBO -----CLAIMANT
OKUNBOR (NEE USENBOR'S CHILDREN)

A N D

1. MR. JOHN USENBOR

2. MR. MICHAEL I. USENBOR -----DEFENDANTS

3. OSAZEE USENBOR

JUDGMENT

The Claimant instituted this suit vide a Wit of Summons and Statement of Claim dated and filed on the 26th of October 2022. However, the Claimant's extant

Statement of Claim is her Amended Statement of Claim dated 23rd November, 2023, wherein she is claiming against the Defendants jointly and severally as follows:

i. A DECLARATION that the Claimant is the bonafide owner of the house lying, situate and known as No. 3, 2nd Izuwa Lane, New Benin, Benin City, and has a Statutory Right of Occupancy over the said house having lived there for over Fifty-Eight (58) years;

ii. The sum of N5, 000, 000.00 (Five Million Naira) only as General and Special Damages for trespass;

iii. AN ORDER directing the 1st Defendant to hand over the house documents in his possession to the Claimant; and

iv AN ORDER of perpetual injunction restraining the Defendants either by themselves, agents, privies, or servants from interfering and or doing anything whatsoever inconsistent with the rights and interest of the Claimant over the said house.

Meanwhile, the Defendants' operative Statement of Defence is their Amended Joint Statement of Defence dated the 5th of July, 2023.

At the hearing of this suit, the Claimant testified for herself and called four witnesses, while the 1st and 3rd Defendants testified for themselves.

From the evidence adduced at the trial, the Claimant's case is that one Madam Beatrice Ehiorobo Okunbor (nee Usenbor), now deceased was her mother.

She alleged that the three Defendants in this suit are members of her late mother's family.

According to the Claimant, her late mother was from the Usenbor Family. She said that the four siblings from the said family in their order of seniority are as follows:

(a) Madam Evbahe Edogun (Nee Usenbor);

(b) Monsignor Patrick Usenbor (the original owner of the house in dispute)

(c) Madam Beatrice Ehiorobo Okunbor (Nee Usenbor); and

(d) Pa Philip Usenbor (the father of the 3rd Defendant).

The Claimant alleged that her late uncle, Monsignor Patrick Usenbor, bought the land at No. 3, 2nd Izuwa Lane, New Benin, Benin City, through his elder sister late Madam Evbahe Edogun (Nee Usenbor) in 1955.

She said that the said Monsignor Patrick Usenbor registered the land in his name at the Ministry of Lands, Benin City in 1956 and later built a mud house and roofed it without fixing the windows when he was a headmaster at Usen, before he left for seminary school in 1961 for training to become a Catholic Priest.

She alleged that when her late mother was faced with serious marital challenges which led to her eviction from her matrimonial home by her husband, the late Monsignor Patrick Usenbor asked her to move into the house in dispute with her five children including the Claimant sometime in 1964.

She said that subsequently, two of her mother's siblings to wit: late Madam Evbahe Edogun and late Pà. Philip Usenbor started to struggle to evict her and take possession of the house.

According to her, when late Monsignor Patrick Usenbor became aware of the strife, he advised and warned them to leave the house for the Claimant's mother because they both have their own houses while the Claimant's mother was stranded and needed the house to shelter her family.

She alleged that the title documents of the house were in the custody of late Madam Evbahe Edogun through whom the Monsignor purchased the land in 1955.

She said that subsequently, the said Madam Evbahe Edogun handed over all her building documents including that of the house in dispute to her Solicitor and son-in-law, Barr. Vincent Bello for safe keeping.

She alleged that upon the demise of Madam Evbahe Edogun in 2003, her son late Felix Edogun, collected all the documents from the Solicitor which later got into the possession of the 1st Defendant.

The Claimant alleged that before her demise, the late Madam Evbahe Edogun took to the advice of late Monsignor Patrick Usenbor to hands off the house, but Mr.

Philip Usenbor was discretely coming to woo her late mother to collect some stipend from her.

The Claimant alleged that the late Monsignor gave the house to her mother as a gift and in her lifetime, her mother rented out some of the rooms in the house and was collecting the rents.

She said that one Florence Ekhaton once leased a portion of the vacant plot adjoining the house and built a cold room, which she subsequently transferred to one Mr. Daniel Agbonson, in the year 2000. She said that the said Mr. Daniel Agbonson executed a Tenancy Agreement with her late mother, being the Landlady of the property in her name. The tenancy Agreement which was drafted by one Chief H. O. Ogbodu SAN in the year 2000 was admitted in evidence at the trial as Exhibit "A".

The Claimant alleged that upon the demise of her mother on the 1st of November, 2016, the late Monsignor Patrick Usenbor assured her that he had given the property to her mother and that she should continue with the management of the house.

She alleged that the Defendants never challenged her concerning the property when late Monsignor Patrick Usenbor was alive but after his demise they started to challenge her over the property.

She alleged that after the demise of Monsignor Usenbor, the Defendants served her with a notice to quit the house and to render account of the rents collected from the property.

The Claimant informed the Court that when late Monsignor Patrick Usenbor, gave her mother the house, one Mr. John Usenbor, Rev. Dr. Felix Igbineweka, and his sister Madam Igbineweka were among those who witnessed the event.

She maintained that one late Mr. Philip Usenbor, the father of the 3rd Defendant is not the owner of the house in dispute. She maintained that before his demise, the said Mr. Philip Usenbor wrote a Will where he listed all his landed property and the house in dispute was not mentioned in his Will. The Will of Mr. Phillip Usenbor was admitted as Exhibit "C" at the hearing.

In defence to this suit, the 1st and 3rd Defendants testified for themselves.

In their evidence, the Defendants stated that the house in dispute was given to Late Philip Usenbor by late Monsignor Patrick Usenbor, sometime in 1964 as a gift in the presence of Mr. John Usenbor and Madam Evbahe Edogun (Nee Usenbor) and he subsequently handed over the title documents to him.

The Defendants alleged that the mud house was fully built by Monsignor Patrick Usenbor before he gave it to Late Philip Usenbor who took possession of same, put Tenants therein and collected rents until 2013 when he fell ill and was unable to continue to collect the rents before he died.

The Defendants maintained that it was Philip Usenbor who put the Cold Room Tenant on the property in dispute and not the Claimant's mother. They alleged that it was when the Claimant's mother was driven out of her matrimonial home with her children that Philip Usenbor invited her to come and stay in the house in dispute with her children where she lived until she died.

They maintained that it was not Monsignor Usenbor who asked Madam Beatrice Ehiorobo to come and stay in the house because it was already given to Philip Usenbor.

They said that in her life time, the Claimant's mother never laid claim to the house in dispute as her own and upon her demise, she was not buried in the house because she was not the owner.

They alleged that the 1st Defendant is the Okaegbe of the Usenbor family who presided over the burial of the Claimant's mother. According to them, the issue of the house in dispute never came up before and after the burial because she was not the owner.

They stated that Monsignor Patrick Usenbor never warned his siblings, Late Madam Evbahe Edogun (Nee Usenbor) and Late Philip Usenbor over the house and same was never given to the Claimant's mother.

Furthermore, the Defendants alleged that the eldest son of the Claimant's mother, Prof. Anthony Okunbor who is now late never laid claim to the house in his life time as being owned by his mother.

The Defendants alleged that the Claimant left her husband in Lagos to take care of her mother and never went back after the death of her mother but started to lay claim to the ownership of the house, a claim which they alleged her late mother never made in her life time.

The Defendants also alleged that Monsignor Patrick Usenbor never told the Claimant to continue to manage the house after the demise of her mother.

They said that upon the death of Philip Usenbor, the house was inherited by the 3rd Defendant, the son of Philip Usenbor after performing the burial rites of his father under Benin native law and custom and the title documents of the house in dispute were handed over to him by the 1st Defendant as the Okaegbe of the family.

They said that the Usenbor family told the Claimant to relinquish possession of the house to the 3rd Defendant but she refused.

According to them, the Usenbor family invited the Claimant to a family meeting severally to have the issue resolved but she did not honour the invitations hence they served her with a notice to quit the premises.

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

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

“Whether the Claimant has proved her case on the preponderance of evidence as to entitle her to judgment”.

Opening his arguments on the sole issue for determination, the learned counsel submitted that the Claimant has failed to prove her case on the preponderance of evidence to entitle her to judgment.

He submitted that where a party seeks declaratory reliefs as in the instant case, the burden is on him to establish his claim by credible evidence and he must succeed on the strength of his own case and not on the weakness of the Defence.

He maintained that in the instant case, the Claimant has failed to establish her case by credible evidence and he cited the following cases: *Okereke v Umahi (2016)11 NWLR, (Pt. 1524) Page 438 at Page 454* and *Nyesom v Peterside (2016)7 NWLR, (Part 1512) Page 452*.

Learned counsel posited that the main complaint of the Claimant in this case is that the property in dispute was given to her late mother by Monsignor Patrick Usenbor. He said that the Claimant has failed to prove that the house in dispute was given to her mother.

Counsel referred to the Lease Agreement, Exhibit “A” which the C.W. 1 allegedly drafted for the Claimant’s mother and pointed out that the name of the Lessor in Exhibit “A” is that of Mrs. B. Usenbor whereas the Claimant’s mother is Madam Beatrice Okunbor. He said that the Claimant’s mother was never married to the Usenbor family for her to bear Mrs. Beatrice Usenbor. He urged the Court to discountenance Exhibit “A” because the name on it is not that of the Claimant’s mother,

He said that Exhibit “A” was not even signed by the CW1 and he submitted that the reason given by CW1 for not signing Exhibit “A” leaves much to be desired.

Submitting further, learned counsel pointed out that of all the witnesses called by the Claimant, none of them was present when the house in dispute was allegedly given to the Claimant’s mother in 1964. He said that the persons mentioned in paragraph 36 of the Claimant’s Statement on Oath who allegedly witnessed the gift such as Rev. Dr. Felix Igbineweka and Madam Igbineweka never testified and he urged the Court to hold that they were not called because their evidence would have been unfavourable to the Claimant and he urged the court to so hold.

Furthermore, counsel posited that it does not accord with common sense that the property was given to the Claimant’s mother in 1964 and from that time till the demise of the donor, the title documents were not given to the Claimant’s mother neither did she request for them when the original owner was alive.

Furthermore, learned counsel questioned why Monsignor Patrick Usenbor did not request for the documents from Madam Evbahe to be given to the Claimant’s mother if he truly gave the house to her.

Learned counsel submitted that the fact that the 3rd Defendant's father did not include the house in dispute in his Will is not proof that the house does not belong to the 3rd Defendant's father.

He maintained that there is no law that states that a man must list all his property in his Will.

Counsel posited that the 1st Defendant gave cogent evidence of how the house in dispute was given to Philip Usenbor by Monsignor Patrick Usenbor in his presence and the documents of title of the house were handed over to Philip Usenbor. He said that this evidence was not controverted by the Claimant under cross examination.

Learned counsel posited that parties are bound by their pleadings and any averment not specifically denied by any party is deemed admitted. He referred the Court to paragraph 11 of the Amended Joint Statement of Defence of the Defendants where they averred thus:

“The Defendants aver that the 1st Defendant is the Okaegbe of Usenbor family and was the Okaegbe that presided over the burial of Madam Beatrice Okunbor (Nee Usenbor) and that the issue of the house in dispute never came up before and after the burial and she was not the owner”.

He said that the above averment was not specifically denied, traversed, or contravened. He said that the legal implication of this is that this evidence is deemed admitted and it is trite law that facts admitted need no further proof and he urged the Court to so hold.

Submitting further, counsel posited that the Claimant's mother did not contest the ownership of the house when Philip Usenbor was alive because she knew that the house does not belong to her. He said that management of a house is different from ownership of the house.

Finally, he urged the Court to dismiss the Claimant's claim with substantial costs.

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

"Whether the Claimant has proved her case on the preponderance of evidence to justify the grant of the reliefs sought from this Honourable Court to give her judgment in this suit".

Arguing the sole issue for determination, learned counsel submitted that the Claimant has successfully proved that she is the bonafide owner of the house and has a Statutory Right of Occupancy over the said house having lived there for over Fifty-Eight (58) years.

Learned counsel submitted that the Claimant has proved by her evidence and those of her witnesses that the house in dispute was given to her mother.

He referred to the evidence of the CW 1 who gave evidence of how he drafted Exhibit "A" for the Claimant's mother, who was the Landlady at that time. He said that she couldn't have rented out a part of the land to build on, if she wasn't the owner of the land, and nobody challenged her during the tenancy including the 3rd Defendant's father.

Counsel submitted that title documents are not needed in the execution of a Lease Agreement. He said that the 3rd Defendant's father Philip Usenbor, whom the Defendants claimed owns the house was still alive during this Lease Agreement and he did not challenge the Claimant's mother for leasing out part of the land for the building of the cold room, neither did he report the Claimant's mother's conduct to Monsignor Patrick Usenbor, the original owner who gave the House to the Claimant's mother in 1964 if they were in doubt.

He submitted that Exhibit "A" was properly executed by the parties, because it was the parties that entered into an Agreement, and not the Lawyer, who wrote the Lease Agreement. He said that the absence of the lawyer's signature cannot affect the validity of the agreement.

On the failure of Rev. Dr. Felix Igbineweka and his sister Madam Igbineweka to testify, learned counsel explained that the Reverend Father said that the Catholic Mission will not allow him to leave the Mission and come to Court to give evidence, He said that since the Reverend did not come, he advised his sister to equally stay away because the Defendants once intimidated the Reverend Father on this matter.

Regarding the title documents of the land, counsel said that it is clear that the documents were with Madam Evbahe Edogun, right from when she purchased the land for Monsignor Patrick Usenbor. He said that she never gave the title documents to Monsignor Patrick Usenbor, the original owner of the land.

He pointed out that upon the demise of Madam Evbahe Edogun, her son-in-law who is her personal lawyer handed over all the documents given to Madam Evbahe Edogun's son, Mr. Felix Edogun and the 1st and 3rd Defendants allegedly stole the title documents from him and claimed that it was given to the 3rd Defendant's father in 1964.

Learned counsel pointed out that the title document, Exhibit "G" still bears the name of the original owner and there is no evidence led by the Defendants to show that ownership actually changed. He maintained that the title documents were stolen by the 1st and 3rd Defendants, that was why the Defendants could not have the courage to meet the owner, Monsignor Patrick Usenbor, who died in 2020, for a Deed of Gift to buttress their claim. He said that they waited till after the death of Monsignor Patrick Usenbor, who died in 2020, before they started laying claim to the house.

He said that the Claimant started laying claim to the house after the death of her mother in 2016.

He submitted that being in possession of the title documents does not make the Defendants the owner of the property.

He said that the Defendants could not show any document to prove that they collected rents from the property.

Counsel posited that the Will of the 3rd Defendant's father is his primary evidence of ownership of the House but the house was not mentioned in the said Will.

Finally, counsel submitted that the Claimant has successfully proved her claim on the preponderance of evidence as required by law and he urged the Court to grant the Claimant's reliefs.

Upon receipt of the Claimant's written address, the Defendant's counsel filed a Reply on Point of Law.

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 addresses of the respective Counsel to the parties.

Upon a careful examination of the Issues formulated by learned counsel for the parties, I am of the view that the sole issue for determination in this suit is:

Whether the Claimant has proved her case on the preponderance of evidence as to entitle her to judgment?

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

Essentially, the Claimant's claim is for declaration of title to the house in dispute and for other ancillary reliefs.

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 there are five ways of proving ownership of land. These are as follows:

- I. By traditional evidence;
- II. By the production of documents of title;
- III. By proving acts of ownership;
- IV. By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute; and
- V. By acts of long possession and enjoyment of the land.

See: *Idundun vs. Okumagba (1976) 9-10 S.C. 227.*

The point must be made that any one of the five means will be sufficient to prove title to the land as each is independent of the other. See: *Nwosu vs. Udeaja (1990) 1 NWLR (Pt.125) 188; and Anabaronye & Ors. vs. Nwakaihe (1997) 1 NWLR (Pt.482) 374 at 385.*

In the instant suit, from the evidence led, the Claimant appears to be relying on the first, third, and the fifth means of proof. To wit: proof by traditional evidence; by acts of ownership; and by acts of long possession and enjoyment of the land.

The Claimant's traditional evidence of title is that her late uncle, one Monsignor Patrick Usenbor, bought the land at No. 3, 2nd Izuwa Lane, New Benin, Benin City, through his elder sister late Madam Evbahe Edogun (Nee Usenbor) in 1955.

She said that the said Monsignor Patrick Usenbor registered the land in his name at the Ministry of Lands, Benin City in 1956 and later built a mud house and roofed it without fixing the windows when he was a headmaster at Usen, before he left for seminary school in 1961 for training to become a Catholic Priest.

She alleged that when her late mother was faced with serious marital challenges which led to her eviction from her matrimonial home by her husband, the late Monsignor Patrick Usenbor asked her to move into the house in dispute with her five children including the Claimant sometime in 1964.

The Claimant alleged that the late Monsignor gave the house to her mother as a gift and in her lifetime, her mother rented out some of the rooms in the house and was collecting the rents.

It is the settled law that in a claim for declaration of title to land, the Claimant has the burden to establish his claim by credible evidence.

Essentially, in this suit in proof of her immediate title, the Claimant alleged that her late mother acquired the land in dispute through a gift inter-vivos from her late brother Monsignor Patrick Usenbor.

A gift inter-vivos is an act whereby something is voluntarily transferred from the true possessor to another person, with the full intention that the thing shall not return to the donor but that the receiver should retain the thing entirely as his own

without restoring it to the giver. Where a gift of land is made inter-vivos, even after the death of the donor, the land remains the exclusive property of the donee. See: - ***A. J. Oguejiofor vs. Pastor O. Osaka & 5 Others (2000) 3 SCNJ Page 1.***

The salient issue to address at this stage is to determine whether it has been established that there was in fact a gift inter-vivos of the house in dispute to the Claimant's mother from her brother, the late Monsignor Patrick Usenbor.

For a gift to constitute a valid gift inter vivos one must either produce and tender a deed of gift, if the grant was under English Law, or call his grantor, successor in title or a witness of the transaction to testify at the trial if under customary law.

It is settled law that to prove a gift of land inter vivos, there must be evidence of the actual handing over of the land and acceptance thereof in the presence of witnesses. The *locus classicus* of this principle is the old case of ***Ayinke v. Ibidunni (1959) 4 FSC 280 at 282*** where ***Ademola, C.J.F.***, observed that disposition of properties could be made under native law and custom by a gift followed by a transfer of the property, or a declaration by a man on his death bed in the presence of witnesses.

The burden of proving by credible evidence is on the Claimant who relies on the gift. In the case of ***GABO V USMAN (2015) LPELR 25678***, the Court held that the person who relies on such gift has to prove two essential facts, namely: the fact of the gift inter vivos to his father; and (2) the title of the donor to the land in dispute. See also the case of ***ENADEGHE V EWEKA (2014) LPELR 24479*** where the Court held that:

"A gift inter vivos must be made openly. There must be evidence of actual handing over of the land and acceptance thereof in the presence of witnesses under native law and custom."

At the hearing, the Claimant and her witnesses seriously contended that the said Monsignor Patrick Usenbor gave the house as a gift to the Claimant's mother when she became stranded after she was evicted from her husband's house.

In her evidence, the Claimant mentioned three people who allegedly witnessed the handing over of the house to the Claimant's mother. Those mentioned were the 1st Defendant, one Rev. Dr. Felix Igbineweka and his sister Madam Igbineweka.

Incidentally, at the hearing, the 1st Defendant vehemently asserted that the house was never given to the Claimant's mother. Furthermore, the other two witnesses, Rev. Dr. Felix Igbineweka and his sister Madam Igbineweka failed to testify on behalf of the Claimant and no evidence was led to explain why they failed to testify.

However in his written address, the learned counsel for the Claimant proffered some explanations for their absence. According to him, the Reverend Father said that the Catholic Mission will not allow him to leave the Mission and come to Court to give evidence; He said that since the Reverend did not come, he advised his sister to equally stay away because the Defendants once intimidated the Reverend Father on this matter.

However, it is trite law that the address of counsel cannot take the place of evidence and cannot be relied upon by a court for the purpose of proof in a claim before it. In other words, no address of counsel can serve as substitute for evidence. See the case of ***HARKA AIR SERVICES (NIG) LTD V. KEAZOR (2005) LPELR-5693(CA) (PP. 24 PARAS. A)***.

From the foregoing, it is apparent that the Claimant has failed to prove a vital ingredient of a gift inter-vivos, to wit: the evidence of witnesses to the handing over of the gift.

Incidentally, at the hearing, the 1st Defendant gave evidence of how the house in dispute was given to Philip Usenbor by Monsignor Patrick Usenbor in his presence and the documents of title of the house were also handed over to Philip Usenbor who is the father of the 3rd Defendant in this suit.

Upon a juxtaposition of the evidence of the Claimant with that of the Defendants on this issue of gift inter-vivos, I am of the view that the evidence of the Claimant is too shallow and hollow to establish their claim of a gift inter-vivos from Monsignor Patrick Usenbor to the Claimant's mother. I believe the evidence of the Defendants particularly that of the 1st Defendant who is the Okaegbe of the Usenbor family and who physically witnessed the handing over of the house to Philip Usenbor. The fact that the title documents are in the possession of the 3rd Defendant who is the son of Phillip Usenbor amounts to additional corroboration of the evidence of the 1st Defendant.

I agree with the learned counsel for the Defendants that the alleged management of the house in dispute by the Claimant's mother cannot amount to ownership of the house.

It is trite law that he who alleges must prove his allegation. The burden is thus on the Claimant to prove the gift inter vivos. The burden is certainly not on the Defendants to disprove the gift inter vivos. In the case of **MADAM ALICE ORIDO v. THEOPHILUS AKINLOLU (2012) LPELR-7887(CA)** with similar facts, the Court of Appeal restated the position thus:

“At any rate there was no burden on them legal or evidential to prove that there was no gift inter vivos of the land in dispute. The burden remained throughout on the respondent. In Lawson v. Ajibulu (supra) @ P.41 Belgore JSC observed:-

"It is too late in our law to disregard onus probandi. The person that asserts must prove and the fact that the defendant never proves or even remains silent will not discharge the burden on the plaintiff ..."

From the foregoing, I am of the view that the Claimant clearly failed to establish her root of title to the house in dispute.

Since the Claimant has failed to establish her root of title, it is trite law that in the absence of valid title, the Claimant's purported possession of the disputed house amounts to an act of trespass. See the cases of **DA COSTA V. IKOMI (1968) 1 ALL NLR 394; AND EGBUTA & ORS V. ONUNA (2007) LPELR-8244(CA) (PP. 24-25 PARAS. F).**

Sequel to the foregoing, the sole issue for determination is resolved in favour of the Defendants. This suit is dismissed with costs assessed at N200, 000.00 (Two Hundred Thousand Naira) in favour of the Defendants.

P.A.AKHIHIERO
JUDGE
25 /03/2025

COUNSEL:

E.E. Ativie Esq-----Claimant.

O.A. Lawani Esq-----Defendants