

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,
ON WEDNESDAY THE 22ND
DAY OF OCTOBER, 2025

BETWEEN:

SUIT NO. HCU/11/2015

MR. AUGUSTINE O. AYERE -----CLAIMANT

AND

PAUL OTOIDE -----DEFENDANT

JUDGMENT

In this suit the Claimant's extant claim is his further Amended Statement of Claim dated 8th of March 2021 where he claimed against the Defendant and his late brother as follows: -

- a) A declaration that the Claimant is the owner and person entitled to apply for and be granted statutory (right) certification of occupancy(sic) in respect of a piece or parcel of land measuring approximately 223ft by 200ft by 70ft lying and situate at Auro Farm Road, Off New Agbor Road, Ebhebe Village, Ebhoiyi Uromi, Esa North East Local Government Area within the jurisdiction of this Honourable Court;*
- b) And order of this Honourable Court that the defendants exhume the said corpse they buried on the land or alternatively forfeit the corpse to mother earth;*

- c) The sum of N2,000,000 (Two Million Naira) being special damages N20,000 per palm trees (sic) multiplied by a hundred palm trees destroyed by the defendant;*
- d) The sum of N10,000,000 (Ten Million Naira) as general damages for the trespass and inconvenience suffered by the claimant as a result of the acts of the defendants; and*
- e) A perpetual injunction restraining the defendants, their agents, servants, privies and workmen from further encroaching into the said piece/parcel of land.*

The extant pleading of the Defendant is his Amended Statement of Defence dated 17th of May 2022.

At the trial, the Claimant testified and called four witnesses, and the Defendant testified and called one witness.

From the pleadings and the evidence adduced at the trial, the Claimant's case is that he is the owner of a piece/parcel of land measuring 223ft by 95ft by 200ft by 70ft and situate at Auro farm Road, Off New Agbor Road, Ebhebe Village, Ebhoiyi Uromi now in dispute.

He alleged that his deceased father, Pa. Ayere Asuelimhen gave the land to him on the 25th of January 1987 when he was still alive in the presence of one late Iluekhabhor Ayere, Johnny Ayere and some other relations.

According to him, the said piece of land was deforested by his forefathers from time immemorial and his father inherited the land from his late father, Asuelimhen Usigbe.

The Claimant alleged that from 1987 till date he has been farming on the said piece of land unchallenged, he planted food crops such as yam, cassava, maize, melon e.t.c and in the year 2007, he started planting cash crops like oil palm.

He said that on the 15th of May 2015, he went to his oil palm plantation on the land and discovered that all the palm oil trees were bulldozed. He saw canopies and chairs on the land, a new grave which they dug on the land with a band set ready for a funeral ceremony.

He said that he reported the incident to the Nigeria Police Uromi Division immediately and the Defendants, Mr. Patrick Otoide and Mr. Paul Otoide were invited to the police station for questioning.

He alleged that the Defendants were arrested, they made statements under caution, and the police took some photographs of his destroyed palm trees which he tendered in evidence as Exhibits “C1” to “C6” at the trial.

The Claimant alleged that the Defendants did not obtain his permission before entering his land.

He maintained that he is the proper person entitled to apply for and be granted statutory right of occupancy over the piece/parcel of land now in dispute.

The Claimant informed the Court that his late father also transferred a parcel of land behind the one in dispute to one late Iluekhabhor Ayere. He said that in between, there is a valley and in front, the land is bounded by Thomas Ebhomien’s land, by the left-hand side bounded by Ayere Asuelimhen family’s land and on the right side it has a common boundary with Monday Okoeguale’s land.

The Claimant alleged that the total value of the oil palm plantation destroyed is N2, 000,000 (Two Million Naira). He alleged that he receives nothing less than N300, 000 (Three Hundred Thousand Naira) per annum as proceeds of sales from the palm trees destroyed by the Defendants.

In his defence, the Defendant testified and called one witness. From the evidence adduced at the trial, the Defendant’s case is that they are the owners and are in possession of the piece of land now in dispute lying and situate at Aluro Farm Road, off New Agbor Road, Ebhebe Village, Ewoyi, Uromi, Esan North-East Local Government Area of Edo State.

The Defendant alleged that they acquired the said land from one Miss Bridget Arobainosen vide a deed of transfer/Receipt dated 10th April 2006 which was executed between the Defendants and their predecessor-in-title. A copy of the said Deed of Transfer/Receipt was admitted as Exhibit “D” at the trial.

The Defendant alleged that their predecessor-in-title (Miss Bridget Arobainosen), acquired title to the land now in dispute vide a deed of transfer/Receipt dated 10th

April 2002 executed between her and her predecessor in title, Mr. Joseph Okhue. A copy of the said deed of transfer was admitted in evidence as Exhibit “E” at the hearing.

The Defendant further alleged that Miss Bridget Arobainosen’s predecessor-in-title, Mr. Joseph Okhue acquired the land now in dispute in 1997 from one Akuewanbhor Okoeguale (alias Akpobe Okoeguale), who inherited same from his father who deforested the land and became the owner under Esan Customary Law applicable in Uromi.

The Defendant alleged that Joseph Okhue was in possession of the land and farmed on it without challenge from the Claimant or anyone else before he transferred same to Miss Bridget Arobainosem in 2002.

The Defendant alleged that their predecessor-in-title, Miss Bridget Arobainosen after acquiring the land from Mr. Joseph Okhue, took possession of same and enjoyed quiet possession thereof while her family members used the land for farming without challenge/hindrance from the Claimant or any other person.

The Defendant alleged that when they acquired the land from Miss Bridget Arobainosen, they took possession of same and exercised maximum acts of ownership such as permitting diverse people, namely, Christopher Enigbe and Richard Ozigbo to farm on the land from 2006 till very recently.

He alleged that in 2015 when one of their brothers, Sylvester Otoide died, he was buried on a part of the land now in dispute without challenge from the Claimant or any other person.

He stated that one Joseph Ebhodaghe, the Claimant in **Suit No. HCU/36/2006** testified to the knowledge of the Claimant herein that the land now in dispute belongs to Akuewanbhor Okoeguale (alias Akpobe Okoeguale). A copy of the judgment in **Suit No. HCU/36/2006** was admitted as Exhibit “G”.

The Defendant maintained that the Claimant never farmed on the land in dispute.

He said that the burial of their brother was not done in secret; that there were obituary posters of their deceased brother posted everywhere in the area and the adjourning

communities a month before the burial ceremony. He said that the Claimant only started laying claim to the land in dispute after the Defendants had buried their brother on the land and finished their burial ceremony.

He stated that the Claimant does not know his land and that all the boundaries mentioned by the Claimant are incorrect.

According to him, the land now in dispute has a major boundary with Mr. Alfred Okpere's land which was subject of litigation in **Suit No. HCU/36/2006** in which judgment was delivered in this Honourable Court on 27th January 2016.

Upon the conclusion of their evidence, the learned counsel for both parties filed their written addresses.

In his final written address, the learned counsel for the Defendant, **K.O. Obamogie SAN** formulated a sole issue for determination as follows:

“Whether having regard to the pleadings filed by the parties and evidence led, the Claimant has proved his case on the balance of probabilities.”

Arguing the sole issue for determination, learned counsel submitted that the law is now well settled that in an action for declaration of title to land, the Claimant must succeed on the strength of his case and not on the weakness of the defence and he relied on the following judicial authorities: -

Kodilinye v Odu (1935) 2 WACA 336 at 337; Lawson v Ajibulu [1997] 6 NWLR (Part 507) 14 at 30; Bello v Eweka (1981) NSCC 48 at 56

He submitted that the evidence adduced by the Claimant in the instant suit is weak, unsatisfactory and unreliable.

Thereafter, he articulated his arguments under the following subheads: -

IDENTITY OF THE LAND IN DISPUTE

He submitted that in the instant suit, the Claimant filed no litigation plan. He referred the Court to evidence of the description of the location of the land in dispute given by the Claimant as stated in paragraph 9 of the Claimant's statement on oath filed on 23rd November 2015 with the originating processes wherein the Claimant described the land as follows:-

“9. That on 25th January, 1987, my father, Pa. Ayere Asuelimhen transferred this land in dispute to me and the back of the land to late Iluekhabhor Ayere in

between there is a valley in the front is bounded by Thomas Ebhomien's land by the left hand side bounded by Ayere Asuelimhen family land, on the right hand side it has a common boundary with Monday Okoeguale, the Oyenbholo of Ebhebe, Ebhoiyi Uromi. The land is measuring the two opposite length are 223ft and 200ft and opposite width is 95ft and 70ft.(sic)"

He said that earlier at paragraph 2 of the said statement on oath, the Claimant stated thus:

"2. That I am the owner of the piece/parcel of land measuring 223ft by 95ft by 200ft by 70ft lying and situate at Aluro farm road off New Agbor Road, Ebhebe Village, Ebhoiyi Uromi."

Furthermore, that in paragraph 2 of the Claimant's further statement on oath filed on 10th March 2021, the Claimant deposed as follows: -

"2. That I am the owner of the piece/parcel of land measuring approximately 223ft X 95ft X 200ft X 70ft lying and situate at Aluro Farm Road, off Ivie Secondary School Road, Off the New Agbor Road, Uromi."

Learned counsel submitted that the above descriptions are meaningless, confusing and unhelpful in identifying the land in dispute. He maintained that no surveyor armed with the above descriptions can identify the land in dispute.

He urged the Court to hold that the identity of the land in dispute has not been established and that on this ground alone, the Claimant's case ought to be dismissed as unmeritorious. He relied on the following authorities:-

Dada v Dosunmu [2006] 18 NWLR (Part 1010) 134 at 159; Ogedengbe v Balogun [2007] 9 NWLR (Part 1039) 380 at 393; Ezeokeke & Sons v Uga & Sons (1962) 1 ANLR (Part 1) 482, 484.

CLAIMANT'S ROOT OF TITLE

Counsel submitted that the Claimant failed to trace his root of title to the original settler or person that deforested the land and became owner by dint of customary law applicable in Uromi. He referred to the case of *Ehimare & Anor v. Emhonyon (1985) 2 SC 49 at 77 – 78; (1985) 1 N.S.C.C. 163 at 170.*

He posited that at paragraph 5 of his further amended statement of claim, the Claimant's forefathers who purportedly deforested the land in dispute in time immemorial were unnamed. He reproduced the said paragraph 5 as follows:-

“5. The Claimant avers that his father Pa. Ayere Asuelimhen inherited the said piece of land from his grandfather, Asuelimhen Usigbe and the said piece of land was deforested by his forefathers from time immemorial.”

He maintained that from the above pleading, the alleged forefathers of the Claimant who deforested the land in dispute have not been disclosed and this vital issue is therefore left to mere conjecture.

He also referred the Court to paragraph 4 of the Claimant's statement on oath filed on 23rd November 2015 where Claimant stated as follows: -

“4. That even though the land is situated at Aluro, Ebhebe Ebhoiyi, Uromi it was jointly deforested by Thomas Ebhomienlen forefathers and my forefather because of their good relationship since time immemorial and the land have always been inherited by their descendants.”

He contended that the above evidence again illustrates the confusion in Claimant's case. He said that the names of Thomas Ebhomienlen forefathers and the Claimant's forefather who allegedly deforested the land in dispute were not given.

Furthermore, he said that it was not clear whether the land was partitioned and shared between the two families.

The learned counsel maintained that the evidence of the Claimant in paragraph 4 of his statement on oath set out above flatly contradicts paragraph 5 of the further amended statement of claim earlier reproduced above.

He submitted that it is settled law that where a party leads evidence that is at variance with his pleading, such evidence must be discountenanced and he relied on the following decisions: *Emegokwue v. Okadigbo* (1973) ANLR (Reprint Edition) 314 at 317 – 318; and *National Investment & Properties Co. Ltd v Thompson Organisation Ltd & Ors* (1969) N.M.L.R. 99 at page 104.

Counsel submitted that in an action for declaration of title to land in which the Claimant relies on traditional history, it is incumbent on him to plead distinctly and lead evidence to show the following: -

- 1) How his ancestors derived title to the land;**
- 2) The person who founded the land and exercised original acts of possession; and**
- 3) The person or persons on whom the title in respect of the land devolved from its founding to present date.**

He relied on the Court of Appeal judgment in the case of *Ezewusim v Okoro (1993) 5 N.W.L.R. (Part 294) 478 at page 499, paragraphs B – C.*

He maintained that in the instant suit, the Claimant failed to plead and lead evidence on the alleged devolution of the undefined land in dispute from its alleged founder to the Claimant.

He said that the Claimant's failure is even more striking because under Esan customary law, devolution from father to son is not automatic but contingent upon the due performance of the burial ceremonies of the deceased father by the son. He said that throughout the length and breadth of the Claimant's pleading and evidence, no mention was made of the performance of burial ceremonies by either the Claimant himself or any other person

He submitted that failure to plead and give evidence on this material issue is fatal to the Claimant's case and he relied on the case of *Eigbejale v Oke [1996] 5 NWLR (Part 447) 128 at 136*

Learned counsel submitted that the above flaws in the Claimant's case are irredeemably fatal to his case. That since the Defendant did not set up a counter – claim in this suit, there is no corresponding duty on him to prove his defence.

He urged the Court to resolve the sole issue for determination in favour of the Defendant.

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

“Whether the Claimant has not proved his case on the balance of probability to be entitled to the reliefs sought by him in his further amended statement of claim”.

Before articulating his arguments on the sole issue for determination, he responded to some of the points raised by the learned counsel for the Defendant.

Responding to the submission that the Claimant's evidence is weak, unsatisfactory and unreliable, the learned counsel submitted that the case of the Claimant is cast in concrete and his evidence at the trial was consistent and unshaken by cross examination. He said that the Defendant did not lead any credible evidence to challenge and/or contradict the impeccable evidence of the Claimant at the trial.

On the alleged failure to prove the identity of the land, counsel submitted that the pleadings of the Claimant reproduced by the Defendant in paragraph 4.04 of his Address represent good and sufficient description, identification and definition of the land in dispute to meet the standard set by the Supreme Court in the case of *Dada V. Dosunmu*, reproduced by the Defendant in paragraph 4.05 of his Address.

He said that the test of whether a description of land in a land case is sufficient for Claimant to succeed in his case is whether by the description a surveyor can produce an accurate plan of such land, and he relied on the case of *Kwadzo V. Adjei (1944) 10 WACA 274*.

He submitted that from the descriptions of the land in paragraphs of his pleadings highlighted by the Defendant in his Address, a survey plan can easily be taken out relating to the land in dispute as the Claimant sufficiently described the four (4) corners of the land and its boundaries.

He referred the Court to some examples of cases where the Claimant failed to prove the identity of the land as follows: *Thompson V. Arowolo (2003) 24 WRN 1 SC*; and *Moshood V. Baero (2001) 52 WRN 42 CA*.

He maintained that in the instant case, the Claimant steadfastly pleaded and gave evidence delineating the disputed land from its surrounding or adjoining lands.

Furthermore, learned counsel contended that from the state of the pleadings of the parties prior to the trial it was clear that both parties knew the disputed land and pleaded to be the owners respectively. He referred the Court to paras 3, 4, 5, 6 & 7 of the Further Amended Statement of Claim and paras 4 – 7 of the Amended Joint Statement of Defence dated 17th May 2022.

Counsel further referred the Court to the following authorities: *Aiyeola V. Pedro (2014) LPELR – 22915 (SC)*; and *Ogun V. Akinyelu Ors (2004) ZPELR – 2319 at P.23, paras A – C*.

On the alleged confusion in the Claimant's case, counsel posited that a land dispute is a civil matter and in all civil cases, the standard of proof is on the balance of probabilities, not beyond reasonable doubt.

He said that the Claimant's pleading that the land was "*deforested by his forefathers from time immemorial*" means his forefathers beyond human memory. He said that it referred to his forefathers of so many years whose identity are difficult to remember because of passage of time. He submitted that the pleading is valid under proof by traditional history, being one of the cardinal methods of proving ownership of land and he referred to the following cases:

- i. ***Idudun V. Okumagba (1976) LPELR – 1431 (SC); and***
- ii. ***Dakilo & Ors V. Dakolo & Ors (2011) LPELR – 915 (SC).***

On the alleged evidence of the Claimant that the land in dispute was jointly deforested by his forefathers and Thomas Ebhoiyi forefathers, counsel submitted that the alleged evidence of the claimant is not covered by any of the pleadings filed in this Honourable Court by the Claimant and such evidence goes to no issue.

On the contention that the Claimant did not plead and lead evidence that he buried his father before inheriting the disputed land, he referred the Court to the Claimant's pleading on how he became the owner of the land in dispute.

He said that the Claimant did not plead that the land devolved on him vide inheritance at the death of his father but that the land was given to him by his father as a gift while his father was alive.

Furthermore, learned counsel submitted that throughout the proceedings in this case the Defendant maintained that the land in dispute does not belong to the Claimant and his family. He said that the Defendant pleaded another set of owners of the land down to himself and never raised the issue of the alleged failure of the Claimant to bury his father.

He said that it is settled law that a party must be consistent with the case which they present to the court for adjudication, and he relied on the case of ***Okon V. Ubi (2006) All FWLR (pt.328) page 717, at [P. 742, paras. F-G].***

Thereafter, the learned counsel articulated his arguments on the sole issue for determination.

He submitted that the Claimant has proved his case on the balance of probability that he is the owner of the property in dispute in this case and is entitled to the reliefs claimed by him in this suit in his further amended statement of claim.

He referred the Court to the case of *Idundu v. Okumagba (1976) LPELR -1431 (SC)* and enumerated the five methods of proving title to land.

He contended that from the evidence led at the hearing, the Claimant has established his title by three of the methods of proof.

He said that in his statement on oath filed on 23rd day of November 2015, the Claimant narrated how the land in dispute was deforested by his family forbears and how his grandfather inherited the land from his own father and how his own father later inherited the land from his grandfather after performing the burial rites of his grandfather, being his eldest son.

He said that the Claimant also led evidence of how on the 25th day of January 1987, his father transferred the land in dispute to him while he was alive.

He said that from the above narration, the Claimant has established his title by traditional history as recognized in the case of *Idundun v. Okumagba*.

Counsel submitted that the Claimant also led evidence of proof by acts of ownership and acts of long possession of the land in dispute.

He referred the Court to evidence of how after his forefathers deforested the land in dispute, his said family has been in possession of same from time immemorial till the year 2015 when the Defendant and his late brother entered the land to bury their relation.

He said that the Claimant called CW1 and CW2, both boundary neighbors as witnesses to further corroborate his evidence of traditional history and long possession of the land in dispute before 2015 when the Defendant and his late brother trespassed into the land.

Counsel submitted that traditionally, the most competent witness in an action for declaration of title to land is the person who forms common boundary with the land in dispute, and he relied on the case of *Gambo v. Turdam (1993) 6 NWLR (Pt 300) Page 500 at Page 405*.

He said that the CWS 1 & 2, being boundary witnesses gave evidence to corroborate the evidence of the Claimant to the effect that the land in dispute was disforested by the Claimant's forefathers. He said that they also confirmed that the Claimant had been in possession of the land as their boundaries neighbor before the Defendant and his late brother trespassed onto it in 2015.

Learned counsel submitted that it is settled law that where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, the Court is entitled to believe the evidence unless it is otherwise inadmissible. He referred the Court to the following decisions: *N.B.A. v. Iteogu (2006) ALL FWLR (Pt 333) P. 1662 at Pp. 1683 -1684, paras A-B (2) N.B.A. v. Fobur (2006) ALL FWLR (Pt 333) P.1739 at 1752, Paras A-E and (3) Zennon Pet & Gas Ltd v. Iddrisyya (Nig) Ltd. (2000) ALL FWLR (PT 312) P.2121 at 2140, paras D-E.*

Furthermore, counsel submitted that where it is established and proved that a party is in long possession of a given portion of land in dispute, the party challenging his possession of the land must lead evidence to defeat the long possession in order to succeed in his claim to the title of the land. He relied on the cases of *Vila Maskala v. Dim Briwe Silli (2002) LPELR -1845* and *Iseogbekun & Anor v. Adelakun & Ors (2012) LPELR -15516*.

Counsel submitted that the pleadings and evidence of the Claimant rooted in oral tradition and long possession stated above are a frontal attack on the roots of title pleaded by the Defendant in this case. He said that this attack automatically makes all the sources of title he pleaded before his alleged acquisition of the land in 2002 necessary parties to this suit who ought to be joined by him to defend his alleged title to the land.

He said that where this appears impossible for the Defendant, he ought to have called his predecessors in title as witnesses in this suit. He said that failure to join them or call them is fatal to the Defendant's defence.

He said that the Defendant did not file a counter claim in this case apparently because of the difficulties highlighted above in his case which he might have envisaged prior to the trial in this case.

He posited that notwithstanding the absence of a Counter-Claim, it is only a better title pleaded and proved by the Defendant that can defeat the long possession of the

Claimant confirmed by his witnesses, particularly, the CW 4 who confirmed that Defendant bulldozed the land and damaged palm trees some of which had matured for harvesting, evidence which he alleged was neither challenged nor countered under cross-examination.

He said that the Defendant refused to hand over his documents of title to the CW 4 at the time of investigation to prevent the Police from discovering the fictitious status of his alleged immediate predecessor-in-title who was said to have relocated to a nameless country immediately after “transferring” the land in dispute to Defendant.

In conclusion, he submitted that the Claimant has successfully proved his title to the land in dispute vide oral traditional history and long possession, while the Defendant failed to justify his trespass onto the land in dispute in the year 2015.

He therefore urged the Court to resolve the sole issue for determination in favour of the Claimant and grant all his reliefs.

I have carefully considered all the processes filed in this suit, together with the evidence led, the exhibits admitted during 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 observed that the Defendant did not file a 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 title to the land in dispute on the balance of probabilities?

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.*

In his address, the very learned counsel for the Defendant strongly contended that the Claimant did not establish the identity of the land in dispute in this suit.

The first duty on the Claimant in a land suit is to lead evidence that will establish the identity of the land in dispute. Even where he has traced his genealogy accurately and such genealogy is not linked to a definite parcel of land, which is the subject of the claim, there will be no parcel of land upon which the declaration can be tied to, as the declaration cannot be made in vacuum. In the absence of proof of identity of the land to which the declaration can be related, the declaration cannot be made. See *Awote v. Owodunni (No. 2) (1987) 2 NWLR (pt. 964) p. 337* and *Nwokidu v. Okanu (2010) 3 NWLR (pt. 1181) p. 362*.

Furthermore, proof of identity of the land in dispute may be done either by oral description of the land through the viva-voce evidence of witnesses especially boundary men or by tendering in evidence a survey plan of the disputed land or by both methods. ***REGISTERED TRUSTEES METHODIST CHURCH NIG & ANOR V. ADENIJI & ORS (2012) LPELR-19899(CA)***. See also the case of *Awote & Ors. v. Owodunni & Anor. (1987) 2 NWLR (pt. 57) 366 at 371*.

In the instant case, the Claimant gave viva voce evidence to prove the identity of the land. In his Writ of Summons and Statement of Claim, the Claimant is claiming title to a piece/parcel of land measuring approximately 223ft by 200ft by 70ft lying and situate at Auro Farm Road, Off New Agbor Road, Ebhebe Village, Ebhoiyi Uromi, Esa North East Local Government Area within the jurisdiction of this Honourable Court.

However, in his pleadings and evidence, the Defendant did not state that he was not certain about the identity of the land in dispute.

As a matter of fact, from his pleadings, it is apparent that he knew the land that is in dispute in this suit.

At paragraphs 12 to 18 of his extant Statement of Defence, the Defendant stated thus:

“12. The Defendants aver that in 2015 when one of their brother, Sylvester Otoide died, he was buried on a part of the land now in dispute without challenge from the Claimant or any other person.

12A. The Defendants states that Joseph Ebhodaghe, the Claimant in Suit No. HCU/36/2006 testified to the knowledge of the Claimant herein that the land now in dispute belongs to Akuewanbhor Okoeguale (alias Akpobe Okoeguale). A copy

of the judgment in Suit No. HCU/36/2006 shall be relied upon at the trial of this case.

13. In answer to paragraphs 3-9 of the Claimant's further amend statement of claim, the Defendants state that the Claimant is not the owner of the land in dispute and the Claimant's family have never laid claim to the land in dispute.

14. The Defendants states that the Claimant could not have inherited the land that is not his father's own. Similarly the Claimant's father could not have given out to the Claimant the land in dispute, which is not his property.

15. The Defendants aver that at no time did the Claimant farm on the land in dispute and/or plant palm seedlings or oil palm on the land in dispute.

16. The Defendants aver that the burial of their brother was not done in secret; there were obituary posters of their deceased brother posted everywhere in the area and the adjoining communities a month before the burial ceremony.

17. The Defendants states that during the said burial of their deceased brother, there was a musical band set, canopies and every other thing associated with burial ceremonies to the knowledge of the Claimants without challenge from the Claimant or any other person.

18. The Defendants further aver that the Claimant only started laying claim to the land now in dispute after the Defendants' had buried their brother on the land and finished their burial ceremony."

From the above paragraphs, it is evident that the Defendant was aware that the land in dispute was the land where he buried his late brother. Thus, the identity of the land was not in issue.

Having settled the issue of identity of the land, I will proceed to determine whether the Claimant established his title to the land.

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 the land in dispute was deforested by his forefathers from time immemorial and his father inherited the land from his late father, Asuelimhen Usigbe.

He alleged that his deceased father, Pa. Ayere Asuelimhen gave the land to him on the 25th of January 1987 when he was still alive in the presence of one late Iluekhabhor Ayere, Johnny Ayere and some other relations.

The Claimant alleged that from 1987 till date he has been farming on the said piece of land unchallenged, he planted food crops such as yam, cassava, maize, melon e.t.c and in the year 2007, he started planting cash crops like oil palm.

In this suit, the Defendant seriously challenged the Claimant's claim that the land in dispute was deforested by his forebears from time immemorial. His learned counsel maintained that the names of the alleged forefathers of the Claimant who deforested the land in dispute have not been disclosed and this vital issue is therefore left to mere conjecture.

In legal parlance, the phrase: "*from time immemorial*" means, beyond "*living memory*"; and it may not be really traced to any recorded time. It may mean "*several*

generations ago." See the case of *Allison & Anor. Vs S.C.M Ltd (2017) LPELR - 42837 SC*).

The law however requires anyone who pleads that he owned land "from time immemorial" to go beyond that story and paint a genealogical tree of the many family ownership of the land. In the case of *Dagaci of Dere & Ors Vs Dagaci of Ebwa & Ors (2006) LPELR - 911 SC, Tobi JSC (of blessed memory)* expounded thus:

"In land matters, it is easy for a Plaintiff to claim that he owned the land from time immemorial. But that is not the end of the story. The story must go further and paint a genealogical tree of the family ownership of the land. It is usually a long story of the members of the family in ownership of the land from the past to the present. The Plaintiff paints a picture of genealogical lines and names, spreading like the branches of a tree, telling a consistent and flowing story of undisturbed ownership or possession of the land. And the flowing story which should first be told in the pleadings should mention specific persons as ancestors before the witnesses give evidence in Court to vindicate the averments in pleadings." See also *Gwantu Vs Yaki & Ors (2013) LPELR - 21416 (CA); Anyanwu Vs Mbara & Anor (1992) NWLR (Pt.242) 386.*

In the instant suit, in his pleadings and evidence before the Court, the Claimant gave a rather terse account of his genealogical lines in relation to the land in dispute. He did not mention the names of *the members of the family in ownership of the land from the past to the present* as required by the decided authorities. See the cases of *Gwantu Vs Yaki & Ors (2013) supra*; and *Anyanwu Vs Mbara & Anor (1992) supra*.

At paragraph 5 of his extant Statement of Claim, the Claimant simply pleaded thus:

"5. The claimant avers that his father Pa. Ayere Asuelimhen inherited the said piece of land from his late father, Asuelimhen Usigbe and the said piece of land was deforested by his forefathers from time immemorial."

He did not mention the specific names of some of his ancestors before he jumped to the names of his grandfather Asuelimhen Usigbe and his father Pa. Ayere Asuelimhen.

I agree with the submission of the learned counsel for the Defendant that in the circumstances of this case, the bare assertion of the Claimant that “*the said piece of land was deforested by his forefathers from time immemorial*” will not suffice to sustain his proof of title by evidence of the traditional history of the land.

Furthermore, as earlier stated in this judgment, in proof of his immediate title, the Claimant alleged that he acquired the land in dispute through a gift inter-vivos from his late father.

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 land in dispute to the Claimant from his late father?

The gift of land under customary law is the gratuitous transfer and handing over of land by the owner (donor) to the donee in the presence of witnesses and acceptance in the presence of witnesses with much publicity. See *Bankole V. Tapo (1961) ALL NLR Page 140*, *Hammod V. UAC Ltd (1935) 2 WACA, page 385- Kwakuwah V. Nayenna (1938) 4 WACA 165*. *MR. COCOA ODIEDI v. MR. VOTE ONORIKUTA & ORS (2020) LPELR-51255(CA)*

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.

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 Defendant 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 ..."

Coming to the instant case, I observed that the Claimant pleaded the fact of a gift inter-vivos. At paragraph 7 of his extant Statement of Claim, he stated as follows:

“7. The claimant avers that his father gave the said piece of land to him on January 25th, 1987, in the presence of late Iluekhabhor Ayere, Johnny Ayere and some other relations.”

However, at the trial the evidence adduced in proof of the gift inter-vivos was rather scanty. There was no evidence of the gratuitous transfer and handing over of the land by the Claimant’s father to the Claimant in the presence of witnesses. The Claimant did not call any relation or person who was present at the alleged gratuitous transfer and handing over of the land by the Claimant’s father to the Claimant. The witnesses who testified on behalf of the Claimant in respect of the purported gift inter-vivos gave hearsay account of the alleged transaction, none of them was physically present. The bare assertion of the Claimant’s witnesses that there was such a gift inter-vivos is not sufficient proof of same.

From the foregoing, I am of the view that the Claimant clearly failed to prove his title to the land in dispute by evidence of the traditional history of the land.

In this suit, apart from the proof by evidence of the traditional history, the Claimant is also relying on proof by acts of ownership and acts of long possession and enjoyment of the land.

At the trial, the Claimant led evidence to show that from 1987 till date he has been farming on the of land in dispute unchallenged. He alleged that he planted food crops

such as yam, cassava, maize, melon e.t.c and that in the year 2007, he started planting cash crops like oil palm.

It is settled law that being in long possession of land without title to the land does not and cannot graduate into ownership of the land in the face of claim by the true owner of land. See the following cases: ***EZEKWESILI & ORS V AGBAPUONWU & ORS (2003) 9 NWLR PART 825 p. 337; CHUKWUMA V IFELOYE (2008) 18 NWLR PART 1118 p.204; CARRENA V AKINLASE (2008) 14NWLR (PT 1107) 281 -282; and ONAKPOYA V. OYIBOCHA & ANOR (2019) LPELR-47863(CA) (PP. 12-13 PARAS. D).***

Since the Claimant has failed to establish his root of title, his purported possession of the land cannot establish his title to the land. 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 proof by acts of ownership and acts of long possession and enjoyment of the land is bound to fail.

In the event, the sole issue for determination is resolved against the Claimant.

On the whole, the Claimant's Claims are dismissed and the sum of N200, 000.00 (Two Hundred Thousand Naira) costs is awarded in favour of the Defendant.

Hon. Justice P.A. Akhiehiero

22/10/25

COUNSEL:

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K.O. OBAMOGIE SAN-----DEFENDANT