

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.AKHIHIERO,
ON MONDAY THE 17TH
DAY OF NOVEMBER, 2025

BETWEEN: **SUIT NO. B/1145/2021**

MRS. PATIENCE ONUWAJE -----CLAIMANT

(Suing through her lawful attorney

Miss Obi Blessing Esosa)

AND

MR OREJEMI ONUWAJE } **----- DEFENDANTS**
MR CHARLES IDAHOSA }

JUDGMENT

In this suit, the Claimant is claiming against the 1st Defendant and 2nd Defendant/Counter Claimant as follows:

- 1. An order of this Honourable Court voiding the sale of the three (3) bedroom bungalow located at No. 11 Imuerueze Street, Off Upper Adesuwa Road, G.R.A Benin City, Edo State to the 2nd Defendant;***
- 2. A perpetual injunction restraining the 2nd Defendant, his agents, privies, assignors and his beneficiaries/ heirs from further act of trespass or***

claim over the property known as No. 11 Imuerueze Street, Off Upper Adesuwa Road, G.R.A Benin City, Edo State;

- 3. A declaration that the Claimant is the owner of the property described as No. 11 Imuerueze Street , Off Upper Adesuwa Road, G.R.A Benin City, Edo State(the subject matter of this suit) since the 1st Defendant has disposed of his right over the said property having sold part of the land to the developer unknown to the Claimant;*
- 4. An order directing the Defendants to pay the sum N1,000,000.00 (One Million Naira) only being general damages for the purported sale; and*
- 5. An order directing the Defendants to pay the sum of N2,000,000.00 (Two Million Naira) only as the cost of this action.*

In this suit, the 2nd Defendant also counterclaimed against the Claimant as follows:

- 1. A declaration that the 2nd Defendant/Counter-Claimant is the bonafide and legal owner in possession of the three (3) bedroom bungalow with the boys quarters on a piece or parcel of land measuring 50ft x 100ft with Certificate of Occupancy registered at Benin City, dated 6th October, 1981 situate and more particularly described as No. 11 Imuerueze Street, Off Upper Adesuwa Road, G.R.A Benin City, Edo State and person entitled to be granted Governor's consent over the said property;*
- 2. An order of this Honourable Court directing the Claimant/Counter Defendant to pay to the 2nd Defendant/Counter Claimant the sum of N5,000,000.00 (Five Million Naira) as damages for trespass to the 2nd Defendant/Counter Claimant's property; and*
- 3. A perpetual injunction restraining the Claimant/ Counter Defendant, her agents, privies, servants, administrators, trustees, assigns, and whosoever is claiming through her from further trespassing, interfering, laying claim, disturbing the tenants or occupants in the property or doing anything inconsistent with the rights and interest of the 2nd Defendant/ Counter Claimant.*

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

From the evidence which she adduced at the trial, the Claimant's case is that she married the 1st Defendant sometime in 1974 under native law and in the marriage Registry in Benin City, a certified true copy of the marriage Certificate was admitted in evidence as Exhibit "D" at the hearing. The three pictures of the wedding and a certificate of compliance were also admitted in evidence as Exhibits "C1", "C2", "C3", and "C4" respectively.

According to the Claimant, after the marriage, the 1st Defendant and she jointly acquired a plot of land measuring 100 feet by 100 feet which they jointly built over the years and lived together at No. 11, Imueruze Street, off Upper Adesuwa Road, G.R.A, Benin City which is the subject matter of this suit. The marriage was blessed with three children, one male and two females.

The Claimant alleged that before she got married to the 1st, she was residing with her parents on stadium road, Benin City, Edo State and after the marriage they both lived in a rented apartment.

She alleged that sometime in 1975 she and the 1st Defendant purchased the parcel of land in dispute measuring 100feet by 100 feet from the late Prince Friday Elema, and a Deed of Transfer was executed, and kept in the custody of the 1st Defendant. The Deed was admitted in evidence at the hearing as Exhibit "F".

The Claimant alleged that she and the 1st Defendant put their resources together to build the house in dispute where they lived together as a family.

She alleged that sometime in the year 2000 the Claimant, the 1st Defendant and their children relocated to the United States.

She said that before she relocated to the U.S. she worked as a secretary in the Edo State Government from 1974 and was receiving salary which she was saving and that she contributed to the purchase of the land and building of the bungalow which is the subject matter of this suit.

The Claimant alleged that in the course of their sojourn in the United States, she separated from her husband, but she has continually lived there with her children and grandchildren for twenty-one years.

She alleged that while they were abroad, the property in dispute was given out on rent to tenants and the 1st Defendant has been collecting the house rent without remitting any money to her.

She said that she has continued to provide for her children and grandchildren as a single mother in the United States.

The Claimant alleged that sometime in June 2020, she called the 1st Defendant to inform him of her plans to return to Nigeria with their children and grandchildren, but to her surprise the 1st Defendant informed her that he had put up the house for sale in Nigeria.

The Claimant alleged that she was informed by a relative that the 1st Defendant sold the house to the 2nd Defendant sometime in 2019 without her knowledge or consent.

She maintained that the property in dispute is jointly owned by the 1st Defendant and herself. She alleged that sometime ago, the 1st Defendant sold a part of the land without her consent to an unknown buyer who built on part of the land measuring 50 feet by 100 feet.

She alleged that when she confronted the 1st Defendant, he stated that he was stranded in Nigeria, and he couldn't travel back to the United States so he had to sell part of the land without her consent.

The Claimant alleged that the 1st Defendant agreed that the other part of the land with the house belongs to her since he sold the other undeveloped part of the property measuring 50 feet by 100 feet.

She alleged that the 2nd Defendant has since leased the house in dispute to Christ Embassy Church where they currently hold their services, thereby rendering the Claimant and her children homeless in Nigeria.

During her evidence, the Claimant's Lawful Attorney tendered some WhatsApp messages between the Claimant and the 1st Defendant along with a Certificate of Compliance. The certificate of compliance was admitted as Exhibit "B" while the printouts of the WhatsApp messages were admitted collectively as Exhibit "B1".

Under cross-examination by the learned counsel for the 1st Defendant, the Certificate of Occupancy of the land in dispute was tendered and admitted in evidence as Exhibit “G”.

In this suit, the Claimant is urging the Court to render the alleged sale of the property null and void.

At the close of the Claimant’s case, the 1st Defendant opened his case and called one Paul Oboh (D.W 1) as his sole witness.

In his evidence before the Court the D.W 1 stated that he has known the 1st Defendant for over 60 years and that he knew when he got married to the Claimant under native law and custom in Benin City in 1974.

He said that sometime in the year 1978, the 1st Defendant bought the parcel of land in dispute, measuring 100ft by 100ft from one Friday Elema, with a deed/agreement as purchase receipt having been executed between Mr. Friday Elema and the 1st Defendant. He said that the deed/agreement was executed solely in the name of the 1st Defendant while his wife, the Claimant signed as a witness not as a joint purchaser. He said that the 1st Defendant alone paid the purchase price for the land.

He alleged that after the purchase, the 1st Defendant commissioned a surveyor to survey and prepare a plan showing the 1st Defendant’s landed property. He said that the 1st Defendant subsequently applied to the then Bendel State Government now Edo state for a certificate of occupancy which was issued to him, in his own name. He identified the Certificate of Occupancy as Exhibit “G”.

The witness maintained that the 1st Defendant did not jointly acquire any property nor jointly build any property with Claimant.

He said that the 1st Defendant sought and obtained a loan from the Federal Mortgage Bank with which he built the house together with his income and other financial benefits, and finally repaid the loan in 1993, without the help or assistance of the Claimant.

He said that sometime in 2014, the youths of Elema quarters Benin City came calling asking for youth development money in respect of the building which the 1st Defendant personally paid and was issued receipt dated 17/11/2014 No. 1035,

for N70,000.00. He tendered a receipt issued to the 1st Defendant from Evbo-Elema Estate dated 17/11/2014 which was admitted as Exhibit “H”.

He stated that the 1st Defendant rented the boys quarters of the house to tenants and was collecting the rent himself without any challenge by the Claimant.

The witness alleged that the Claimant was a typist/stenographer in the Edo State Government with a meagre salary of level 4 which was less than a N100.00 in 1974. He said that her salary was barely enough for subsistence and not enough to support the building of a house or to carry out any major project.

He informed the Court that the 1st Defendant graduated in 1972, was on level 10 at the Rubber Research Institute at Obayantor as a senior staff and was constantly sent abroad for courses and training with salary running and allowances and estacode paid to him from which he saved enough money to purchase the land and commence the building of the said property.

He alleged that to complete the building, the 1st Defendant obtained a loan from the Federal Mortgage while using the house documents as collateral for the loan.

He said that the 1st Defendant has since repaid the loan, and he tendered some bank documents relating to the loan. The bundle of documents from the Federal Mortgage Bank were collectively admitted in evidence as Exhibit “I”.

He said that the 1st Defendant was responsible for the travel expenses of his wife and children when they eventually relocated abroad.

He said that the Claimant and the 1st Defendant presently live in the United States but have been separated since 2017, and their children who are now adults have been living separately in the last twenty-one years.

The witness stated that the Claimant is not entitled to any rent from the property in dispute because she does not have any interest or title to the property in dispute.

He said that the 1st Defendant has regularly taken care of the children, made financial provision and paid their school fees all through till they became of age and started fending for themselves.

He said that the 1st Defendant sold a portion of the land measuring 100ft by 50ft since November 2014 and the new buyer has since built on same without disturbance, challenge or hindrance by anybody.

He said that the Claimant and the 1st Defendant did not discuss the issue of the Claimant returning to Nigeria and being buried on the remaining part of the land.

He said that the 1st Defendant as the sole owner has since alienated his interest in the remaining portion of the land to the 2nd Defendant.

In defence of this suit and in proof of his Counter-Claim, the 2nd Defendant testified.

He alleged that he bought the property in dispute from the 1st Defendant who he maintained was the rightful owner of the property before he purchased it.

He said that he rented the bungalow to Christ Embassy Church after acquiring the property.

He alleged that he made a discreet inquiry of the property and conducted searches to ascertain that the property was free from any encumbrances before he purchased it.

He stated that the property was transferred to him vide a Deed of Assignment dated the 3rd day of January 2020 which was duly executed between the 1st Defendant and himself upon payment of valuable consideration to the 1st Defendant.

When the counsel for the 2nd Defendant sought to tender the Deed of Assignment as a receipt, the learned counsel for the Claimant objected on the ground that the receipt was not stamped.

Eventually, the Court admitted the Deed of Assignment as a receipt, subject to the payment of the stamp duty by the 2nd Defendant. It was marked as Exhibit “J”. From the endorsement on Exhibit “J” it is confirmed that the stamp duty was eventually paid on the document on the 14th of February 2025.

The 2nd Defendant also identified the Certificate of Occupancy which is Exhibit “G” together with the receipt/agreement which is Exhibit “F”.

The 2nd Defendant informed the Court that immediately after taking possession of the property, he renovated it before letting out the main building to Christ Embassy Church while he retained the tenants at the boys' quarters.

He said that he has been exercising his rights of ownership over the property without let or hindrance before this suit was instituted.

At the conclusion of evidence, the learned counsel for the parties filed their final written addresses which they adopted as their final arguments in respect of this suit.

In his final written address, the learned counsel for the 1st Defendant, ***Dr. Peter A. Otaigbe*** formulated three issues for determination as follows:

- 1. Whether the Claimant can succeed in this suit without the joinder of the Registrar of Title/ Deeds as a Defendant in this suit to effect rectification as the 1st Defendant's title is registered;***
- 2. Whether the Claimant has furnished this honorable court with sufficient, cogent and credible evidence to entitle her to the relief sought; and***
- 3. Whether equality avails the Claimant this suit being a civil and a matrimonial Causes Act proceeding.***

Thereafter, the learned counsel argued the three issues seriatim.

ISSUE 1:

WHETHER THE CLAIMANT CAN SUCCEED IN THIS SUIT WITHOUT THE JOINDER OF THE REGISTRAR OF TITLES/ DEEDS AS A DEFENDANT IN THIS SUIT TO EFFECT RECTIFICATION AS THE 1ST DEFENDANT'S TITLE IS REGISTERED

Arguing this first issue, learned counsel submitted that the Claimant cannot succeed in the absence of the Registrar of Titles/ Deeds as a necessary party to effect rectification of the C of O in favour of the Claimant in this case.

He maintained that in the absence of the Registrar Of Titles/ Deeds this case cannot be effectively and effectually dealt with as the Registrar is **a necessary** party to this suit and he cited the following cases: ***GREEN V GREEN (2001) 45 WRN 1987 3 NWLR PT 1 480 3 NWLR PT 61 480 @498 PARA C-D; YUSUF***

V ADEYEMI 2009 14 WRN 89 @ 42-43 LINE 30-J; and OLADELE V AKINLARO 2010 24 WRN (1-193)@167 R.I.

He said that the 1st Defendant adduced sufficient evidence to show that he was issued with a certificate of occupancy by the then Bendel state government (now Edo State Government) in his own name.

He said that the Claimant was unable to produce a better title to the land.

Learned counsel also relied on the case of ***I B B IND LTD V MUTUNCI CO NIG (2012) 6 NWLR PG 487 AT PG 497 R.14*** and ***OLAGUNJU V ADESOYE (2009) 33 WRN (1-175) PG AT 6 R 5.***

He submitted that the C of O which was tendered and admitted as exhibit “G” is enough and sufficient proof to establish the fact that the 1st Defendant is the owner/entitled to the declaration of the title over the land in dispute. He relied on the case of ***MULIMA V GONIRAM (2004) ALL FWLR PT 228 751 @751 R 1,2 & 3.***

He posited that a certificate of occupancy is only prima facie evidence of title and the right there under conferred.

He said that despite the copious pleadings by the 1st Defendant that he is the registered owner of the land in dispute; the Claimant did nothing and sought no relief to correct the official record in the land Registry as regard the ownership of the land in dispute

He submitted that in an action where the land in dispute has been registered in the name of one of the defendants in the land registry, for the claimant to succeed, he must join the Register Of Titles/ Deed in the land registry as one of the defendant and his /her relief must include **AN ORDER DELETING THE TITLE REGISTERED IN THE NAME OF THE DEFENDANT FROM THE DEED RECORD IN THE LAND REGISTRY. HE MUST SEEK FOR AN ORDER OF RECTIFICATTON OF THE DEEDS RECORDS.**

He submitted that the Claimant’s reliefs in the instant suit are inadequate and improperly constituted and he relied on the case of ***AINA VS JINADU 1992 4 NWLR PT 233 PT 91 @ 96 RP.***

He also relied on the case of ***ONAGORUWA V AKINREWI 2011 88 LRCN 2144 2380 PG 2182 RATIO 12.***

He submitted that the 1st Defendant has proved ownership of the land in dispute by the preponderance of evidence. He said that his sale to the 2nd Defendant- a bona fide purchaser for value without notice of any encumbrance is therefore valid. Again, he relied on the case of ***ONAGORAWA V AKINREMI 2001*** (supra).

Submitting further, the learned counsel posited that assuming but without conceding that the Claimant has proved her case, the order for rectification will be directed at a party not before the court. He said that in the circumstance, this Court lacks the jurisdiction to entertain this suit as a condition precedent was not fulfilled. See ***HI-FARM LTD V UNIBADAN (1993) NWNR (PT.290) PAGE 719 AT 723 R.6.***

Finally, he urged the Court to dismiss the Claimant's case.

ISSUE TWO:

WHETHER THE CLAIMANT HAS FURNISHED THIS HONORABLE COURT WITH SUFFICIENT, COGENT, AND CREDIBLE EVIDENCE TO ENTITLE HER TO THE RELIEF SOUGHT

Counsel submitted that the Claimant has a very heavy burden of proving her entitlement to the reliefs sought in this case against the Defendants.

He posited that the Claimant and the 1st Defendant are married but living apart. He said that they lived together for some time in the property in dispute and have three children between them.

The learned counsel narrated the evidence adduced by the Claimant at the trial and submitted that the document of title which the Claimant tendered as Exhibit "F" was an agreement between Friday Elema and the 1st Defendant. He said that there is nowhere in the document where the Claimant is identified as a joint owner. He said that the Claimant only signed as a witness.

He maintained that the Claimant failed to prove any joint ownership. Learned counsel referred the Court to its recent judgment in the case of ***WURAOLA***

AGBIRHIO V MR. SAMUEL OVBIAGELE which he said is *impari materia* with this case.

He listed the methods of proving title to land in Nigeria and submitted that the Claimant could not satisfy any of the ways proving title to land.

He submitted that it is settled law that a certificate of occupancy is sufficient to establish ownership of land and he cited the case of **CHIROMA V SUWA (1986) 1NWLR (PT.19) 251**.

FAILURE TO PROVE THE PRINCIPAL RELIEFS: EFFECT ON THE OTHER RELIEFS

Counsel posited that the principal relief as stated in paragraph 23 (c) of her statement of claim is that the Claimant is seeking a declaration that she is the owner of No. 11 Imueruze street, Upper Adesuwa Road, G.R.A, Benin City , the 1st Defendant having sold part of the land to a developer unknown to the Claimant.

He said that the other reliefs are predicated on the principal relief. He said that when the principal relief fails, the ancillary reliefs must fail and he relied on the following cases: **ONOVO V MBA 2014, 14 NWLR PT 1427 PG. 391, RATIO 11 @ PG 433; LIMAZA V. MOHAMMED 2003, 26 WRN PG 122 RATIO 1; AHMAD V ADEDOKUN 2023 VOL 25, WRN PG 24 RATIO 2; OLAYEMI V. FEDERAL HOUSING AUTHORITY 2022, ALL FWLR PT 1156 PG 716 RATIO 10**.

He therefore urged the Court to dismiss all the reliefs sought by the Claimant in paragraphs 23 (a- e) of her Statement of Claim.

On the claim to joint ownership of the property in dispute, learned counsel posited that the pleadings on the point are scanty and there is no evidence to substantiate it. He relied on the cases of **AKINBOW V AKINBOD, 2002, 5 NWLR PT 761 PG 564@569&570 R 4** and **OMOTUNDE V OMOTUNDE 2001, 9NWLR PT 718 PG 252@263 R.20**.

CONTRADICTIONS/INCONSISTENCIES IN CLAIMANT'S CASE

Learned counsel posited that there were some contradictions and inconsistencies in the Claimant's case on the issue of how the property was built.

He said that in paragraph 9 of the Claimant's statement on oath as well as paragraph 8 of her witness statement on oath they alleged that the Claimant and the 1st Defendant put money together to build the house but in paragraph 8 of the C.W 2's oath, he said that the Claimant's mother also contributed money for the purchase of the land but under cross-examination the witness alleged that it was her auntie who took the loan to build the house.

Furthermore, he said that under cross-examination, the witness said that she did not know how much the Claimant and her parents contributed to build the house. That she also said that her parents contributed money to the building of the house, yet she does not know how much their parents contributed.

He urged the Court to dismiss the Claimant's case on this ground.

THE 1ST DEFENDANT'S CASE

Learned counsel submitted that in land matters, particularly in declaratory actions, the court is enjoined to first consider the case put forward by the Claimant and decide whether he has made a prima facie case before considering the defence put forth by the Defendant if need be.

He said that if the Claimant fails to prove his/her entitlement as has been shown in this case, a consideration of the Defendants defence to the action will not arise at all and the Claimant's case must be dismissed without recourse to the defence and he relied on the cases of *DIM V. ENEMWO 2009 VOL 42 PG 1&2*; *IROAGBARA V UFOMADU 2009, 174 LRCN PG 61 @ 85*; and *DENSY INDUSTRIES LTD V. UZOKWE 1998 9 NWLR PT.567 PAGE 569 @ 585*.

Counsel submitted that the 1st Defendant did not file any counter-claim in this proceeding and therefore has no duty to prove title to the land in dispute and he relied on the cases of *ONOVO V. MBA 2014 14 NWLR PT 1427 PG 391 @441*; *AKINBOYEDE V AJIBOSO, 2014 VOL 33 WRN PG 133 @ 160 TO 161*; and *ANYAFULU V MEKA 2014 7 NWLR PG 1406 PG 396 RATIO 6*.

He said that notwithstanding the fact that the law does not place any burden on a defendant who did not file a counter-claim in a land matter, in this suit, the 1st

Defendant pleaded and led evidence in proof of his title and possession of the land in dispute.

He referred to the statement of oath of the D.W. 1, Paul Oboh who tendered the title documents of the 1st Defendant including a Certificate of Occupancy. He said that the Claimant did not tender any documents in proof of her title to the land in dispute neither did she lead any cogent evidence in proof of same.

Again, he submitted that by virtue of the provisions of *section 131 of the Evidence Act*, oral evidence cannot contradict or vary the contents of documents.

He therefore urged the Court to dismiss the case of the Claimant.

ISSUE THREE

WHETHER EQUALITY AVAILS THE CLAIMANT IN THIS SUIT BEING A CIVIL CLAIM AND NOT A MATRIMONIAL CAUSES ACT PROCEEDING

Learned counsel referred the Court to *Section 1 of the Matrimonial Causes Act* and submitted that this suit is a civil suit and not a Petition for divorce where the issue of settlement may arise if brought under the Matrimonial Causes Act.

He said that being a civil suit seeking declaratory reliefs, such reliefs must be proved on the strength of the Claimant's case and not on the weakness of the defence.

He said that throughout her pleadings and evidence, the Claimant did not lead any evidence to be entitled to any equitable remedy, and he relied on the case of *SENTINEL ASSURANCE CO LTD V. Z.G. B.N LTD (1992), 2 NWLR PT 224 PG 495@ 496 R1&2*.

He submitted that equity follows the law, and it will be unfair and unjust for the party who could not prove title to the land in dispute through preponderance of

evidence to claim the portion of the disputed land with higher value. He relied on the case of ***TONNIMAS V. CHIGBE* 2020 29 WRN PG 23@ PG 26 R 3.**

ESTOPPEL BY INACTION\CONDUCT

Learned counsel posited that the Claimant was aware that the 1st Defendant has been collecting the rent from the building for over twenty years and that he sold the vacant plot measuring 100ft by 50ft in 2014, but she did nothing to challenge him. He said that Equity aids the vigilant not the indolent.

He submitted that the Claimant is estopped by her inaction and/or conduct from enforcing whatever right she had. He relied on the cases of ***OKE v ATOLOYE* (1986)1NWLR (PT.15) 241 R.12** and ***AMADI V NWOSU* (1989) 2NWLR (PT.10)P.375.**

He finally urged the Court to dismiss the Claimant's case.

In his own final written address, the learned counsel for the 2nd Defendant ***Bamidele Uche Igbinedion Esq.*** submitted that the Claimant has failed to prove her ownership of the property in dispute, and he referred the Court to its recent judgment in the unreported case of **Suit No. B/197/2014 VICTORIA WURAOLA AGBIRHIO V. MR. SAMUEL OVBIAGELE.**

He enumerated the five methods of proving title to land in Nigeria as expounded in the cases of ***IDUNDUN V. OKUMAGBA* (1976) 10 SC 227 @ 246;** and ***MOGAJI & ORS V. CADBURY NIG LTD* (1985) 2 NWLR (PT 7) PG 293**

He said that in this case, the Claimant relied on proof by the production of documents of title, but she was unable to produce any document of title.

He maintained that it is settled law that a certificate of occupancy is sufficient to establish title to land and he relied on the case of ***CHIROMA V. SUWA* (1986)1 NWLR (PT.19).**

Furthermore, learned counsel posited that since the Claimant failed to prove the principal relief of declaration to title, all the other reliefs are bound to fail and he relied on the following decisions on the point: ***ONOVO V. MBA*(2014) 14 NWLR (PT1427) PG 391, R11 @PG 433; *LIMAZA V. MOHAMMED* (2003)26 WRN PG 122 R. 1; *AHMAD V. ADEDOKUN* (2023) VOL 25, WRN PG 2; *OLAYEMI***

V. FEDERAL HOUSING AUTHORITY (2022) ALL FWLR (PT 1156) PG 716 R. 10.

He urged the Court to dismiss all the reliefs sought by the Claimant in paragraph 23(a-e) of her statement of claim.

ASSERTION THAT THERE WAS AGREEMENT THAT THE PROPERTY IN DISPUTE BELONGS TO THE CLAIMANT NEED TO ADDUCE EVIDENCE.

Counsel submitted that the Claimant did not adduce any evidence to prove that there was any agreement between the 1st Defendant and the Claimant that the disputed property belongs to the Claimant.

On the issue of the alleged joint ownership of the property and the alleged inconsistencies and contradictions in the Claimant's case, the arguments of the learned counsel are similar to those of the counsel to the 1st Defendant on the same points.

2ND DEFENDANT'S DEFENCE

Learned counsel referred to the evidence adduced by the 2nd Defendant in defence of this suit and submitted that the 2nd Defendant/ Counter Claimant is a **bonafide purchaser for value** and therefore entitled to the reliefs sought. He relied on the following cases: *BENJAMIN OHIAERI V. YUSUF (2009) LPELR- 2361 (SC)*, *ANIMASHAUN V. OLOJO (1990) LLJR (SC)*; and *IBIYEEYE V. FOJULE (2006)3 NWLR (PT. 988) PG 640*.

2ND DEFENDANT'S COUNTER CLAIM

On the 2nd Defendant's Counter-Claim, the learned counsel formulated the following two issues for determination:

- 1. Whether the 2nd Defendant/Counter Claimant has led credible evidence in proof of their counter-claim entitling him to the judgment of this honourable court?*
- 2. Whether the 2nd Defendant/Counter Claimant has been able to prove the case of trespass to entitle him to damages sought.*

Thereafter, the learned counsel argued the two issues seriatim.

ISSUE ONE:

Whether the 2nd Defendant/Counter Claimant has led credible evidence in proof of their counter-claim entitling him to the judgment of this honourable court?

Learned counsel enumerated the five ways of proving title to land and submitted that the 2nd Defendant has established his title by valid documents of title such as the Deed of Assignment between the 1st Defendant and himself and the 1st Defendant's certificate of occupancy.

He maintained that it is settled law that a Certificate of Occupancy establishes true ownership and extinguishes any previous title or claim of any other person. He cited the case of **CHIROMA V. SUWA (1986) supra.**

BONA FIDE PURCHASER FOR VALUE WITHOUT KNOWLEDGE OF EXISTING PRIOR LEGAL OR EQUITABLE INTERESTS

Counsel submitted that the 2nd Defendant purchased the property in dispute as a bona fide purchaser for value without knowledge of existing prior legal or equitable interests over the land.

He said that the 2nd Defendant is not affected in any way by the transferor's misdeed (if any) against the Claimant. He said that as a bona fide purchaser without notice, the 2nd Defendant is immune from all such allegations against the 1st Defendant. He said that he had no actual, constructive or implied knowledge of any existing titles to the property since he purchased with clear conscience.

He submitted that where there are multiple interests in land, the person with a legal interest is in the eyes of the law, the person having a better claim to the land. He said that in this case, the 2nd Defendant is an innocent purchaser for value without notice of the Claimant's purported equitable interest over the same property and he relied on the following cases:

BENJAMIN OHIAERI V. YUSUF (2009) LPELR- 2361 (SC), ANIMASHAUN V. OLOJO (1990) LLJR (SC); (1990) 10 NILR 5; IBIYEYE V. FOJULE (2006) 3 NWLR (PT. 988) PG 640; JIWUL V. DIMLONG (2003) 9 NWLR (PT. 824) PG 154; OKONKWO V. COOP & COMMERCE BANK

(NIG) PLC (2003) 8 NWLR (PT 822) 347;and ACB LTD V. IHEKWOABA (2003)16 NWLR (PT. 846) 249.

He therefore urged the Court to hold that the 1st Defendant is a bona fide purchaser with value.

ISSUE TWO

Whether the 2nd Defendant/Counter Claimant has been able to prove the case of trespass to entitle him to damages sought.

Learned Counsel submitted that in an action for trespass to land, before a Claimant can succeed, he must have a finding of continuous possession of the land in dispute, and he cited the cases of ***Oladimeji v. Oshodi (1968) 1 ALL N.L.R 416*** and ***T.A Orasanmi v. Idowu (1959)4 F.S.C 40.***

He referred to the evidence to show that after purchasing the property, the 2nd Defendant took possession, massively renovated same and let the bungalow to Christ Embassy Church while retaining the tenants at the boys' quarters.

He relied on the case of ***Ekpan v. Uyo(1976)3 NWLR (PT.26) 63***

He maintained that the 2nd Defendant was in peaceful possession of the property until the Claimant's lawyer came with police and some thugs to chase away his workers and warned them not to further work on the property. He said that the action of the Claimant and his lawyer amounts to trespass and he cited the following decisions on the point: ***AMAKOR V. OBIEFUNA (1974)3 S.C 66 BY FATOYI – WILLIAMS JSC; OKECHUKWU V. OKAFOR (1961)1 ALL NLR 685; and AROMIRE & ORS V. AWOYEMI ((1972) 2 S.C 1.***

Finally, he urged the Court to grant the reliefs sought in their Counter-Claim.

Upon receipt of the Claimant's Final Written Address, the learned counsel for the 2nd Defendant filed a Reply on Points of Law which he also adopted as part of his final arguments in this case.

He submitted that the claim to joint ownership of the property merely because the Claimant is married to the 1st Defendant should be rejected,

He submitted that the case of *OWNERS M/V BACO LINER VS. ADENIJI (1993)* cited by the Claimant's counsel was neither a land matter between a couple nor a divorce matter so it is not applicable to this case. He said that it was a case which dealt with the admiralty jurisdiction of the Federal High Court.

Furthermore, he posited that the cases of *HALL VS. HALL* and *EGUNJOBI VS. EGUNJOBI* are inapplicable on three grounds:

(a) The cases relied on by the Claimant's Counsel related to divorce proceedings which triggered the need for division of properties, which is not the situation in this suit. He said that by her own admission, the Claimant and the 1st Defendant are still legally married;

(b) *EGUNJOBI's* case centered on the right of the spouse to share in the matrimonial home. But in this suit, the Claimant has not asserted that the property in dispute is the couple's matrimonial home; and

(c) The Claimant wants to be buried on part of the land, which is the subject matter of this suit, when she dies. Hence, her claim seems to be for a resting place after her demise. However, none of the authorities that the Claimant's Counsel cited recognize such a right. They all deal with the right of a spouse while alive.

He therefore submitted that the cases are inapplicable and should be discountenanced.

Finally, on the submission by the Claimant's Counsel that the principle of constructive trust should apply to constitute the 1st Defendant as a trustee of the property in dispute, counsel posited that this principle was not pleaded in the Statement of Claim.

Furthermore, he maintained that all these cases related to the matrimonial home and the need to provide a dwelling place for the wife and the children of the marriage. He said that this crucial element is lacking in this case, where the Claimant is living abroad and is trying to preserve a place for her future interment upon her demise.

Finally, he urged the Court to dismiss this suit for being misconceived.

In his final written address, the learned counsel for the Claimant, ***I.F. Elema Esq.*** formulated two issues for determination as follows:

- 1. Whether the claimant is a joint owner of the subject matter acquired in 1978 during the pendency of the statutory marriage conducted on 1974 with the 1st Defendant; and***
- 2. If the answer to the above is in the affirmative, whether the claimant is entitled to the reliefs sought in her claim.***

Thereafter, the learned counsel argued the two issues seriatim.

ISSUES ISSUE 1

Whether the Claimant is a joint owner of the subject matter acquired in 1978 during the subsistence of the statutory marriage conducted in 1974 with the 1st Defendant.

Arguing this first issue, the learned counsel posited that from the evidence before this honourable Court, it has been established that the Claimant married the 1st Defendant in the marriage registry in 1974, and the marriage certificate was tendered and admitted as exhibit D.

He said that it is also uncontroverted that the subject matter was acquired in 1978 vide a deed of transfer marked as Exhibit F in this suit.

He said that the 1st Defendant did not testify in this matter neither did he enter his defence through a lawful attorney even though it is evidently clear that the 1st Defendant was properly served. He said that the Statement of Defence of the 1st Defendant was filed on the 23rd of March 2022 without the accompanying statement of oath of the 1st Defendant.

He submitted that when a pleading is not supported by disposition on oath, whatever is contained in it cannot be acted upon by court not being in evidence, in the circumstances as the content of the pleadings not supported by deposition is deemed abandoned by the party concerned. For this submission he cited the case of ***ALALADE & ORS V ODODO & ORS (2019) LPELR-46888 (CA)***.

He emphasised that the statement of defence of the 1st Defendant must be accompanied by a written deposition on oath by the 1st Defendant otherwise the

entire statement of defence is deemed abandoned. See the case of *AJIKAW VS ANSALDO (1991)2 NWLR(PT173) 359 @ 375 C-F*.

He maintained that pleadings cannot speak in court, that words which make up the pleadings are completely dead and are of no evidential or probative value and he relied on the following cases: *OJOH VS KAMALU (2005) 18 NWLR (PT. 958) 523 at 565g-h*, *OGUNYADE VS OSHUNYEKA (2007)*

15 NWLR (PT. 1057)218 AT 246.

Learned counsel submitted that it is the 1st Defendant's written statement and adopted statement on oath that can give life to the Statement of Defence. He said that the evidence of his sole witness, Paul Oboh (D.W. 1) amounts to hearsay.

Counsel submitted that even if the court decides to discountenance the statement of defence, the onus still lies on the Claimant to prove her case.

He submitted the case of the 1st Defendant is solely predicated on the fact that since the 1st Defendant solely signed Exhibit F, the subject matter belongs to him alone.

He submitted that the property was jointly purchased by the Claimant and the 1st Defendant. He maintained that the issue of taking a loan to complete the property in 1993 after moving in is a complete fallacy and makes no sense.

He posited that the 1st Defendant claimed that he was already a senior staff earning a good salary before he built the house but, in another breath, he alleged that he applied for a loan in a Federal Mortgage Bank using the title documents as collateral for the loan.

He said that there was no explanation of how he took a loan after thirteen years of purchasing the land to complete the said building which he claimed he commenced in 1978 with his salaries and estacodes.

He maintained that the evidence of the D.W. 1 amounts to hearsay and should be rejected.

Learned counsel submitted that the general principle is that by marriage, a husband and wife become one person under the law. He said that the legal existence of a woman is suspended or incorporated or consolidated into that of

the husband. He said that this principle was upheld in the case of ***OWNERS M/V BACO LINER VS ADEJIMI (1993)2 NWLR (PT 274)206.***

Furthermore, counsel submitted that there is nothing wrong in buying property in the name of one of the parties. He said that such a property remains matrimonial property which belongs to the party jointly and he relied on the cases of ***EGUNJOBI VS EGUNJOBI (1974) 4 ECSLR;*** and ***MUELLER VS MUELLER (2006)6 NWLR (PT 977) 627.***

He submitted that the partitioning of a joint matrimonial property must be done based on equity. He maintained that matrimonial property is a property jointly owned in the cause of marriage by husband and wife in which their children or child have a legal right of inheritance, and it doesn't matter whether the property was acquired in the name of one of the parties. He referred to principle of ordinary or common justice as expounded in the case of ***HALL VS HALL(1982) 3 FLR379*** by Lord Denning. He said that this concept of ordinary common justice was applied in the case of ***EGUNJOBI VS EGUNJOBI (1976) 2 FNR 78***, where the court clearly stated that the wife was entitled to a share in the matrimonial home. He urged the Court to heed the admonition of Lord Denning in the celebrated case of ***PARKER VS PARKER (1954) ALL ER P22.***

He said that from the evidence, it is clear that the 1st Defendant has sold his share of the property.

He posited that the Claimant led substantial evidence to show that she contributed towards the property in dispute.

Counsel submitted without conceding that even if the Claimant did not contribute financially but cohabited and had children for the 1st Defendant, she is still entitled to a share in the subject matter. She relied on the cases of ***SUNMONU VS SUNMONU 2021 LPELR 56002 (CA)*** and ***ANIETO VS ANIETO 2019 LPELR-47223 (CA)***

Again, learned counsel submitted that the defence of the 1st Defendant as a sole signatory can be best referred to as constructive trust. He relied on the dictum of Lord Denning in the celebrated English cases of ***FALCONER VS FALCONER (1970)1 WLR 1333 AND HUSSEY VS PALMER (1972)1 WLR 1286*** where a constructive trust was defined as trust imposed by law wherever justice and good

conscience require. He described it as a remedy through which the court can enable an aggrieved party to obtain resolution, and the success of the party's case does not depend on his or her direct physical or monetary contribution to the building or acquisition of the property. He submitted that where a property is held in the name of a party to a marriage that party is construed as holding it in trust for himself and the spouse. He relied on the case of ***OKERE V OKERE (2014) LPELR-24287 (CA)***.

ISSUE 2:

If the answer to the above is in the affirmative, whether the claimant is entitled to the reliefs sought in her claim.

Counsel submitted that the principle guiding joint ownership applies to this case and he relied on the case of ***KOBUWA & ANOR V LAMUDU & ANOR (1998) JELR-45567***.

He maintained that since the property is matrimonial property, the Claimant is entitled to her share of the property. He relied on the Latin maxim: ***Ubi jus ibi remedium***.

He submitted that this Court can enforce the rights of the Claimant by granting the reliefs sought in this suit. He said that the law is clear on joint ownership, a husband and wife share equal ownership of the matrimonial property and have equal undivided right to keep or dispose of the property. He maintained that the general rule is that a married couple can jointly acquire or dispose of a property, yet neither party cannot dispose of such a property without the consent of the other party. He relied on the case of ***KOBUWA & ANOR V LAMUDU & ANOR SUPRA***, where the Court held that where a property is jointly owned by more than one person, each of the joint owners does not own any part of the property which he can singly dispose of until the property is partitioned.

Counsel submitted that the 1st Defendant having sold part of the property in 2014 albeit, illegally, he has no business with the other part of the property in dispute.

He submitted that it will be totally unfair and against the principle of equity and equality for the 1st Defendant to benefit from his own wrongdoing if he is given any right to the property now in dispute.

He referred to the case of ***MUELLER VS MUELLER (2006) 6 NWLR (PT 977) 627*** on the principle of equity. He said that the 1st Defendant never stated in his defence that he obtained the consent of his wife neither did he share the proceeds of sale with her.

On the issue as canvassed by the 1st Defendant's counsel in his final written address as to joinder of the registrar of title/deed as a defendant in this suit to witnesses before this Honourable Court, counsel submitted that it has no bearing on this matter. He maintained that the Claimant can succeed without joining the Deeds Registrar as a Defendant.

In conclusion, he urged the Court to discountenance the defence of the Defendants and counterclaim and grant the reliefs sought by the Claimant.

I have carefully considered all the processes filed in this suit, together with the evidence led, the exhibits admitted in the course of the hearing and the address of the learned counsel for the parties.

Upon a careful examination of the issues formulated by the learned counsel for the parties, I observed that the 2nd Defendant filed a Counter-Claim in this suit so I am of the view that the two issues for determination in this suit are as follows:

- 1) Whether the Claimant has proved her case on the balance of probabilities? and***
- 2) Whether the 2nd Defendant/ Counter-Claimant is entitled to the reliefs which he seeks in his Counter-Claim?***

I will now proceed to resolve the two issues seriatim.

ISSUE 1:

Whether the Claimant has proved her case on the balance of probabilities?

The fulcrum of the Claimant's case is hinged on her claim for a declaration that she is the owner of the property described as No. 11 Imuerueze Street, Off Upper Adesuwa Road, G.R.A Benin City, Edo State which is the subject matter of this suit. The other claims are based on this principal relief.

In essence, the Claimant's main claim is for a declaration of her title to the land in dispute.

In a claim for a declaration of title to land, the burden is on the Claimant to satisfy the Court that he is entitled, on the evidence adduced by him, to the declaration which he seeks. The Claimant must rely on the strength of his own case and not on the weakness of the Defendant's case. See: *Ojo vs. Azam* (2001) 4 NWLR (Pt.702) 57 at 71; and *Oyeneyin vs. Akinkugbe* (2010) 4 NWLR (Pt.1184) 265 at 295.

It is now settled law that the five ways of proving ownership of land are as follows:

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

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

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

In the instant suit, from the evidence led, the Claimant appears to be relying on the second and third means of proof. To wit: proof by the production of documents of title and acts of ownership.

Incidentally in this suit, the Claimant and her husband who is the 1st Defendant are laying claim to the property by the same documents of title. The Claimant's case is that the 1st Defendant and herself are joint owners of the property in dispute. She further asserts that since the 1st Defendant has been collecting all the

rents from the property without remitting anything to her and he has sold part of the property, the remaining property belongs solely to her.

Contrariwise, the 1st Defendant has maintained that he is the sole owner of the property in dispute and in exercise of his right of ownership, he has sold the property to the 2nd Defendant in this suit.

At this stage, it is pertinent for me to address the salient issue raised by the very learned counsel for the Claimant on the failure of the 1st Defendant to file a deposition and to testify in defence of this suit. According to the learned counsel, the failure of the 1st Defendant to testify amounts to an abandonment of his Statement of Defence. He maintained that in the circumstance, the evidence of his sole witness (D.W.1) amounts to hearsay.

It is settled law that in a civil suit, a party need not appear in person or testify in support of his case if he can present his case through other persons as witnesses or by other means. See the case of ***PDP V. NWANKWO & ORS (2015) LPELR-40668(CA) (PP. 15 PARAS. E)***.

It is not the law of evidence or practice and procedure that a party must give evidence or tender evidence on his or her own behalf personally before he could prove his case if he is the Claimant or to disprove allegations against him as a Defendant. A party is at liberty to prove or establish his case or defence through any person in accordance with the law without going into the witness box. See the case of ***CROSS RIVER STATE NEWSPAPERS CORPORATION v. MR J.L. ONI & ORS (1995) 1 NWLR (PART 371) 270 at 293***.

See also ***BRITISH AND FRENCH BANK LIMITED v. SOLEL-EL-ASSAD (1967) NMLR 40; KEHINDE v. OGUNBUNMI and Ors (1967) 1 ALL NLR 306 or (1968) NMLR 37; and NJOEMANA V. UGBOMA & ANOR (2014) LPELR-22494(CA) (PP. 44-45 PARAS. C)***.

Furthermore, on the issue of the evidence of the D.W. 1 being hearsay, I wish to point out that the witness told the Court that stated that he has known the 1st Defendant for over 60 years and that he knew when he got married to the Claimant under native law and custom in Benin City in 1974.

He said that sometime in the year 1978, the 1st Defendant bought the parcel of land in dispute, measuring 100ft by 100ft from one Friday Elema, with a deed/agreement as purchase receipt having been executed between Mr. Friday Elema and the 1st Defendant. He said that the deed/agreement was executed solely in the name of the 1st Defendant while his wife, the Claimant signed as a witness not as a joint purchaser. He said that the 1st Defendant alone paid the purchase price for the land.

He alleged that after the purchase, the 1st Defendant commissioned a surveyor to survey and prepare a plan showing the 1st Defendant's landed property. He said that the 1st Defendant subsequently applied to the then Bendel State Government now Edo state for a certificate of occupancy which was issued to him, in his own name. He identified the Certificate of Occupancy as Exhibit "G".

The witness maintained that the 1st Defendant did not jointly acquire any property nor jointly build any property with Claimant.

From the foregoing, it is evident that the D.W. 1 gave direct evidence of his personal knowledge of the transaction having known the 1st Defendant and the Claimant right from when they married till date. I hold that the evidence of the D.W. 1 is not hearsay and the failure of the 1st Defendant to testify does not amount to an abandonment of his Statement of Defence.

I will now appraise the Claimant's evidence in proof of her case. At the trial, the Claimant led evidence to show how she allegedly acquired the property in dispute together with the 1st Defendant.

According to the Claimant, after the marriage, the 1st Defendant and she jointly purchased the parcel of land in dispute measuring 100feet by 100 feet from the late Prince Friday Elema, and a Deed of Transfer was executed, and kept in the custody of the 1st Defendant. The Deed was admitted in evidence at the hearing as Exhibit "F".

The Claimant alleged that she and the 1st Defendant put their resources together to build the house in dispute where they lived together as a family.

She alleged that while they were abroad, the property in dispute was given out on rent to tenants and that the 1st Defendant has been collecting the house rent without remitting any money to her.

She maintained that the property in dispute is jointly owned by the 1st Defendant and herself. She alleged that sometime ago, the 1st Defendant sold a part of the land without her consent to an unknown buyer who built on part of the land measuring 50 feet by 100 feet.

The Claimant alleged that the 1st Defendant agreed that the other part of the land with the house belongs to her since he sold the other undeveloped part of the property measuring 50 feet by 100 feet.

From the evidence adduced at the hearing, the Claimant appears to be relying on the Deed of Transfer between Prince Friday Elema and the 1st Defendant which was admitted in evidence at the hearing as a receipt and marked as Exhibit “F”. Upon a careful examination of the said Exhibit “F”, it is evident that the receipt bears the name of the 1st Defendant. The Claimant merely signed as a witness to the 1st Defendant.

In the instant case, the Claimant made some efforts to prove that she and her mother supported the 1st Defendant with some funds towards the purchase of the land and the erection of the building on the land.

Upon careful examination of the oral and documentary evidence adduced by the Claimant, it is not clear how much the Claimant contributed towards the purchase of the land or the building of the house. Her witnesses were unable to mention any specific amount.

However, the purchase receipt, Exhibit “F” states very clearly that the sum of N3,000.00 (Three Thousand Naira) was paid by the 1st Defendant for the purchase of the land.

Furthermore, there is another receipt for the payment of the sum of N70,000.00 (Seventy Thousand Naira) (Exhibit ‘H’) by the 1st Defendant to the Elema Estate also in respect of the same property in dispute. The receipt also bears the name of only the 1st Defendant.

To crown it all, the 1st Defendant eventually obtained a Certificate of Occupancy for the property in his name. A careful examination of the Certificate of

occupancy which was admitted as Exhibit “G” reveals that the statutory right of occupancy was granted to the 1st Defendant in person.

Upon careful examination of the two receipts of payment by the 1st Defendant, together with the Certificate of Occupancy, there is nothing to suggest or indicate that the property was jointly purchased or owned by the 1st Defendant and the Claimant.

In this suit, the Claimant led oral evidence to try to prove that she jointly purchased the property with the 1st Defendant. She even alleged that there was an agreement between them that the remaining property belongs to her since the 1st Defendant has sold part of the property.

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

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

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

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

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

Be that as it may, it is settled law that the burden is on the party who claims joint ownership of a property to adduce sufficient evidence either by means of financial or material contribution towards the purchase of the said property. See the cases of *Chibuzor & Anor v. Chibuzor* (2018) LPELR 46305; and *Odelola v. Odelola & Ors* (2016) LPELR-42222.

This position of the law was upheld by the Supreme Court in the case of *Adaku Amadi V. Edward N. Nwosu* (1992) 6 SCNJ 59 where *Kutigi JSC* (as he then was) instructively observed in the leading judgment as follows:

"... when she came to testify in Court, she ought to have explained the quality and quantity of her contribution, she also ought to have given details and particulars of the contribution which would have enabled the Court to decide whether or not she owned the property with PW1 (her husband)."

See also the case of *ESSIEN V. ESSIEN & ORS* (2008) LPELR-4049(CA) (PP. 22-23 PARAS. B).

Thus, a party claiming joint ownership of a property has the burden to prove a joint acquisition of the property. See the following decisions on the point: *OBASOHAN V. OMORODION & ANOR* (2001) 7 SCNJ 168; *AMALILI & ORS. V. NWOKOCHA & ORS.* (2013) LPELR-21961(CA) AT 15-16 (F-A); and *OKONKWO & ANOR V. IZUCHUKWU & ORS* (2019) LPELR-49102(CA) (PP. 36-37 PARAS. D).

Furthermore, in the case of *OSUJI V EKEOCHA* (2009) LPELR-2816(SC), the apex Court expounded thus: *"To claim joint ownership, the purchase or sale agreement must have named all those who are now laying claim as joint owners of the land. Contributions made in constructing the house cannot translate it into joint ownership."*

In the instant case, the purchase receipts and the Certificate of Occupancy did not name the Claimant as a joint owner.

With regards to the ingenious submissions of the learned counsel for the Claimant on the concept of the unity of husband and wife and the doctrine of constructive trust, I agree entirely with the submissions of the learned counsel for the 2nd Defendant that this suit is not a matrimonial suit to determine the sharing of

matrimonial property rather it is essentially a suit to determine ownership of the property in dispute. The cases cited by the learned counsel on matrimonial disputes are not quite applicable to the instant case. More so, I have made a clear finding of fact that the property was not jointly purchased or built by the 1st Defendant and the Claimant. The preponderance of evidence shows that the 1st Defendant was the bona fide sole owner of the property before he transferred it to the 2nd Defendant. The concept of constructive trust cannot come to play in the face of strong title documents which vested the property in the 1st Defendant alone. The maxim is that “*equity follows the law*”.

I hold that the Claimant has not established her title by any valid title document.

On the further attempt of the Claimant to prove her title by acts of ownership, it is settled by a chain of authorities that where the pleaded title to land has not been proved, as in this case it will be unnecessary to consider acts of ownership and possession which acts are no longer acts of possession but acts of trespass. See the following decisions on the point: ***BALOGUN VS AKANJI (1988) 1 NWLR (PTJ. 70) 301; FASORO & ANOR VS BEYIOKU & ORS (1988) 2 NWLR (PT 76) 263; and OLALEYE V. TRUSTEES OF ECWA (2010) LPELR-4743(CA) (PP. 53-55 PARAS. E).***

Thus, the attempt to establish the title of the Claimant by acts of ownership is bound to fail.

From the foregoing, I hold that the Claimant has failed to prove her title to the property in dispute. Issue one is therefore resolved against the Claimant.

ISSUE 2:

Whether the 2nd Defendant/ Counter-Claimant is entitled to the reliefs which he seeks in his Counter-Claim?

In his Counter-Claim, the 2nd Defendant counter-claimed against the Claimant seeking reliefs for declaration, perpetual injunction and damages.

I will commence by pointing out that a counter claim is a separate action, independent of the Claimant’s claim. Therefore, the burden and standard of proof

on the 2nd Defendant/Counter-Claimant is the same as that required of the Claimant. In the case of *Onazi & Anor V C.G.C (Nig) Ltd & Anor (2015) LPELR-40583 (CA)*, a counter claim was defined as: "... *an independent action which is usually appended to the main or principal claim for convenience of determination. See Ogbonna V A-G Imo State (1992)1 NWLR (Pt.220) 647; Usman V Garke (2013) 14 NWLR (Pt.840) 261.*

It has been described as 'a weapon of defence' which enables a defendant to enforce a claim against the plaintiff as effectively as in an independent action. It must, however, be directly related to the principal claim but not outside and independent of the subject matter of the claim. See Nsefik V Muna (2014) 2 NWLR (Pt.1390) 151 at 184, Per Ariwoola, JSC. Per Ogbuinya, JCA pp. 37-38, Paras E-B."

Thus, in this Counter-Claim, the burden is on the 2nd Defendant/Counter-Claimant to lead credible and cogent evidence to establish his counter-claims.

In proof of his Counter-Claim, the 2nd Defendant led evidence of how he bought the property in dispute from the 1st Defendant who he maintained was the rightful owner of the property before he purchased it.

He said that he rented the bungalow to Christ Embassy Church after acquiring the property.

He stated that the property was transferred to him vide a Deed of Assignment dated the 3rd day of January 2020 which was duly executed between the 1st Defendant and himself upon payment of valuable consideration to the 1st Defendant.

The Court admitted the Deed of Assignment as a receipt, subject to the payment of the stamp duty by the 2nd Defendant and it was marked as Exhibit "J". As already observed in this judgment, the Deed of Assignment has since been stamped.

The 2nd Defendant also identified the Certificate of Occupancy which is Exhibit "G" together with the receipt/agreement which is Exhibit "F".

The 2nd Defendant informed the Court that immediately after taking possession of the property, he renovated it before letting out the main building to Christ Embassy Church while he retained the tenants at the boys' quarters.

He said that he has been exercising his rights of ownership over the property without let or hindrance before this suit was instituted.

From my findings under Issue One, it is evident that the Claimant is not the owner of the property in dispute. There is evidence that the purchase receipts and the Certificate of Occupancy are all in the name of the 1st Defendant.

Furthermore, there is evidence that the 1st Defendant has since sold the property to the 2nd Defendant who is presently in possession of the property. As a matter of fact, the 2nd Defendant has let out the main building to Christ Embassy Church while he is collecting rents from the tenants at the boys' quarters.

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

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

In the instant case, I hold that the 2nd Defendant has established his title to the property in dispute by his receipt of purchase coupled with his physical and constructive possession of the property.

Apart from seeking a declaration of title, the 2nd Defendant is also seeking injunctive relief and damages.

Ordinarily, the grant of the relief of perpetual injunction is a consequential order which should naturally flow from the declaratory order sought and granted by

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

Since the 2nd Defendant's title to the land has been established, I hold that he is entitled to a perpetual injunction to restrain the Claimant, her agents, privies or servants from any further acts or trespass.

On the claim for damages it is settled law that general damages are presumed by law as the direct natural consequences of the acts complained of by the Claimant against the Defendant.

The assessment of general damages is not predicated on any established legal principle. Thus, it usually depends on the peculiar circumstances of the case. See: ***Ukachukwu vs. Uzodinma (2007) 9 NWLR (Pt.1038) 167; and Inland Bank (Nig.) Plc vs. F & S Co. Ltd. (2010) 15 NWLR (Pt.1216) 395.***

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

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

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

In the instant case, the 2nd Defendant did not lead any evidence of the quantum of losses which he suffered from the acts of the Claimant. However, it is usual in cases such as this, where the Claimant is unable to quantify his losses, for the Court to award nominal damages.

Issue two is therefore resolved in favour of the 2nd Defendant/Counter-Claimant.

On the whole, the Claimant's Claims are dismissed and the 2nd Defendant's Counter-Claims succeed and are granted as follows:

- 1. A declaration that the 2nd Defendant/Counter-Claimant is the bonafide and legal owner in possession of the three (3) bedroom bungalow with the boys quarters on a piece or parcel of land measuring 50ft x 100ft with Certificate of Occupancy registered at Benin City, dated 6th October, 1981 situate and more particularly described as No. 11 Imuerueze Street, Off Upper Adesuwa Road, G.R.A Benin City, Edo State and person entitled to be granted Governor's consent over the said property;*
- 2. An order of this Honourable Court directing the Claimant/ Defendant to the Counter-Claim to pay to the 2nd Defendant/Counter Claimant the sum of N2,000,000.00 (Two Million Naira) as damages for trespass to the 2nd Defendant/Counter Claimant's property; and*
- 3. A perpetual injunction restraining the Claimant/ Defendant to the Counter-Claim, her agents, privies, servants, administrators, trustees, assigns, and whosoever is claiming through her from further trespassing, interfering, laying claim, disturbing the tenants or occupants in the property or doing anything inconsistent with the rights and interest of the 2nd Defendant/ Counter Claimant.*

I award the sum of N200, 000.00 (Two Hundred Thousand Naira) as costs in favour of the 2nd Defendant/Counter-Claimant.

Hon. Justice P.A. Akhiehiero

17/11/25

COUNSEL:

I.F. ELEMA ESQ -----CLAIMANT

DR. PETER OTAIGBE-----1STDEFENDANT

BAMIDELE IGBINEDION—2ND DEFENDANT/COUNTER - CLAIMANT