

**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 WEDNESDAY**  
**THE 21<sup>ST</sup> DAY OF JANUARY, 2026.**

**BETWEEN:**

**SUIT NO. B/134/2018**

**1. PA. THOMAS AGHAYERE**

***(Odionwere of Utagban Village)***

**2. MR. CLIFFORD EWEKA**

**3. MR. DANIEL IYOHA**

**4. MR. GODWIN IYOHA**

***(For themselves and on behalf of  
all members of Utagban Village)***

**DEFENDANTS TO COUNTER-CLAIM**

**AND**

**1. SIR J.I.A. ARUMEMI- IKHIDE**

**2. OJEMAI FOODS LIMITED**

**-----COUNTER-CLAIMANTS**

**JUDGMENT**

Originally, the Defendants to the Counter-Claim initiated this suit as the Claimants by a Writ of Summons dated 13<sup>th</sup> March, 2018, against the Defendants/Counter-Claimants, seeking some declaratory and injunctive reliefs in respect of a parcel of land measuring approximately 1245ft by 3400ft lying and situate at Utagban Area, off Upper Ekenwan Road Benin City.

Upon instituting the aforesaid suit, the Defendants/Counter-Claimants filed their Amended Joint Statement of Defence and counter-claimed against the Claimants/Defendants to the Counter-Claim.

During the suit, several hearing notices were served on the Claimants/Defendants to the Counter-Claim but they failed to come to Court to lead evidence in proof of their claims.

Thus, they abandoned the suit; their claims were struck out and the Defendants/Counter-Claimants were granted leave to lead evidence in proof of their Counter-Claim.

In essence, the subsisting suit is the Counter-Claim of the Counter-Claimants.

In their Counter-Claim, the Counter-Claimants are seeking the following reliefs:

- a) A declaration that the Counter-Claimants are the owners of the vast Parcel of Land situate, lying and being at Uholor Village Area, of Benin City and measuring 30.887 Hectares dated 18/8/2003 (sic) as drawn and delineated in Survey Plan No DSC/ ED /2003 / 89 registered in the Survey Department of the Ministry of Lands, Edo State and 3.212 Hectares as drawn and delineated in Survey Plan No DSC/ ED /2004 / 119 dated 5/11/2004 and have been in possession of same;*
- b) A declaration that the Counter-Claimants are entitled to be issued with the Certificate of Occupancy in respect of the said vast Parcel of Land having applied for same and publication thereon made without any objection;*
- c) N200,000,000.00 (Two Hundred Million Naira) damages for Trespass, encroachment and forcibly entry into the Counter-Claimants land lying and situate at Uholor Village Area plus maliciously damaging the brick wall fence erected to secure the said Parcel of Land;*
- d) Perpetual injunction restraining the Defendants to the Counter-Claim, their Agents, Servants, Privies and Collaborators from further encroachment of the Counter-Claimants' vast Parcel of Land and a further order directing the Defendants to the Counter-Claim, their Agents, Servants, Privies and Collaborators to vacate and give up any portion of land already occupied by them forthwith.*

In proof of their case, the Counter-Claimants called one witness who testified in chief and tendered several documents.

From the evidence adduced by the Counter-Claimants' their case is that the 2<sup>nd</sup> Defendant is a limited liability company that engages in Agriculture and allied services

with more emphasis on Poultry, Piggery, Livestock, Hatchery and Poultry processing distribution and consultancy and has vast parcels of land in Utagban Village Area.

They alleged that they acquired the vast parcel of land measuring 30.887 Hectares lying and situate in Utagban Village Area and surveyed same with Survey Plan No DSC / ED / 2003 / 89 dated 18/8/2003 which properly identified and delineated the entire land acquired by the Defendants within the area. Subsequently an additional 3.212 Hectares were acquired and surveyed accordingly with Survey Plan No. DSC / ED / 2004 / 119 dated 5/11/2004.

The Counter-Claimants alleged that the aforementioned parcels of land were acquired and surveyed upon the issuance and approval of the Community approval dated 27/8/03 to the Counter-Claimants, to be vested and transferred to them upon satisfaction that the said lands were vacant and the economic crops thereon were paid for.

They alleged that upon the satisfaction of all the necessary and relevant Bini Native Law and Custom on acquisition of land processes and upon the execution of a Deed of Assignment between the Community Leadership of the Utagban Village Area, dated 2<sup>nd</sup> March 2004, they took possession of the land by erecting a brick fence around it. Thereafter, they proceeded to apply for the issuance of a Certificate of Occupancy as beneficial holder.

At the hearing, the Counter-Claimants tendered a Deed of Assignment made on the 2<sup>nd</sup> of March 2004 which was admitted as Exhibit "A".

Furthermore, they tendered a Document titled: "Application for Land Development and Farming" dated 27/8/03 which was admitted as Exhibit "B".

Again, they tendered two survey plans which were admitted in evidence as Exhibits "C1" and "C2" respectively.

The Counter-Claimants alleged that from the time they took possession of the aforesaid parcels of land, they have been in peaceable possession and have been carrying out their agricultural livestock operations thereon without let or hinderance.

They alleged that after they commenced the processing of the issuance of the Certificate of Occupancy, a publication was carried out in the Nigerian Observer of Tuesday, December 4, 2007. The copy of page 7 of the Nigerian Observer was admitted in evidence as Exhibit "D".

They alleged that up to the time of filing this suit, nobody has filed any objection against their application for a Certificate of Occupancy in respect of the parcels of land.

They said that they have always been in peaceable possession until sometime in March, 2017 when they noticed an encroachment into the land by persons procured and encouraged by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants to the Counter-Claim.

According to them, upon noticing the alleged encroachment, they immediately contacted the Odionwere and Village Head of Utagban Village Area, who immediately intervened and instructed them to stop the acts of trespass and encroachment.

They alleged that instead of desisting from the alleged acts of encroachment, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants to the Counter-Claim started to harass the Counter-Claimants' workers and contractors physically by disturbing the ingress and egress of movement into the land.

They said that the Defendants to the Counter Claim also engaged the services of Solicitors to write letters to harass the Counter-Claimants and lay claims to the parcels of land in dispute.

Thereafter, there were some correspondences between the parties over the dispute.

They alleged that sometime in February, 2018, the Defendants to the Counter-Claim in conjunction with some other persons pulled down the brick wall fence of their land and forcibly entered the land with the intention of taking over the vast parcels of land to allocate same to other people.

The Counter-Claimants alleged that they reported the Defendants to the Counter-Claim and their agents and collaborators to the Police and the newly constituted Task Force for the Implementation of the State Anti – Community Development Association but the harassment and encroachment continued, hence they are counter-claiming against them in this suit.

After the sole witness for the Counter-Claimants' testified in chief, the matter was adjourned for cross-examination of the witness and fresh hearing notice was issued and served on the Defendants to the Counter-Claim.

On the next date, they failed to come to court and they were foreclosed from cross-examining the witness. The Counter-Claimants closed their case and the matter was adjourned for defence.

On the day of defence, the Defendants to the Counter-Claim failed to attend Court despite the Hearing Notices that were issued and served on them. The Court then foreclosed them and the matter was adjourned for Final Addresses.

The Counter-Claimant's Final Written Address was served on the Defendants to the Counter-Claim but they did not make any response.

On the day of final address, the learned counsel for the Counter-Claimants adopted his Final Written Address as his final arguments in support of their case.

In his final address, the learned counsel for the Counter-Claimants, **A.B. Ogunsusi Esq.** formulated the following two issues for determination:

- 1) Whether the Counter-Claimants have proven acts of possession and ownership for which they are entitled to the declaratory reliefs sought? And**
- 2) Whether the Counter-Claimants are entitled to the Damages for trespass as claimed and a Mandatory Perpetual Order of Injunction against the Defendants to the Counter-Claim, their successors in title or any other 3<sup>rd</sup> party howsoever called or described claiming through them or otherwise?**

Thereafter, the learned counsel argued the two issues seriatim.

### **ISSUE 1:**

***Whether the Counter-Claimants have proven acts of possession and ownership for which they are entitled to the declaratory reliefs sought?***

Arguing the first issue, the learned counsel posited that initially, the Defendants to the Counter-Claim instituted this suit but because of their failure to prosecute their claim, same was struck out and the Counter-Claimants were granted leave to prove their counter-claims.

Furthermore, he maintained that despite the opportunities available to the Defendants to the Counter-Claim to defend the Counter Claim, they also failed, refused and neglected to do same.

He said that they did not file any Defence to the Counter Claim thus making the Counter-Claimants largely uncontroverted.

Therefore, the learned counsel submitted that upon the evidence of the sole witness of the Counter-Claimants in this suit, Mr. Andie Oviku, General Manager of the 2<sup>nd</sup> Counter Claimant, the Counter-Claimants have discharged the evidential burden to establish the declaratory reliefs sought by them in their Counter-Claim. He emphasized that the evidence of the Counter-Claimants was uncontroverted and should be accepted by the Court and he relied on the case of **CAMEROON AIRLINES V. MR. MIKE E. OTUTUIZU (2011) 1-2 S.C (PT.111) 200 AT 237.**

Furthermore, counsel submitted that the Counter-Claimants have led uncontroverted oral and documentary evidence to prove their root of title and he cited the case of **GODWIN C. ONOVO & 3 ORS. V. FERDINAND MBA & 3 ORS (2014) 5-6 S.C (PT IV) 147 AT 170.**

Counsel submitted that the Counter-Claimants have met the standard to prove title to land as stated in the case of ***IDUNDUN V. OKUMAGBA***. He maintained that while the position of the law is that one of the five ways may be sufficient to prove title, the Oral and Documentary evidence adduced by the Counter-Claimants are sufficient to establish all the five ways of proving title to land as enumerated in the case of ***IDUNDUN V. OKUMAGBA***.

He submitted that Exhibit B (Community Approval of Allotment to the Defendants) satisfied the requirement of proof by traditional history or traditional evidence.

Furthermore, he posited that Exhibits A, B, C1, C2 & D satisfied the requirements of proof by grant or production of documents of title and proof by acts of ownership extending over sufficient length of time.

Again, he submitted that Exhibits A, B, C1, C2, D, E, F2 & G1 – G16, satisfied the requirement of proof by acts of long possession and he cited the cases of ***MICHEAL AIYEOLA V. RAMOTA YEKINI PEDRO (2014) 5 S.C. (PT III) 128 AT 166-16*** and ***GODWIN C. ONOVO & 3 ORS. V. FERDINAND MBA & 3 ORS (SUPRA) AT 180***.

Counsel submitted that Exhibits C1 and C2 clearly shows that the identity of the land is not in dispute. He said that notwithstanding the fact that the Counter Claimants acquired the land after the enactment of the Land Used Act of 1978, they led evidence of compliance and fulfillment of the condition precedent for acquiring land under Bini Native Law and Custom.

He therefore submitted that the Counter-Claimants led persuasive and unchallenged evidence to establish the Declaratory Reliefs sought in the Counter Claim and he urged the Court to grant same.

## **ISSUE 2:**

***Whether the Counter-Claimants are entitled to the Damages for trespass as claimed and a Mandatory Perpetual Order of Injunction against the Defendants to the Counter-Claim, their successors in title or any other 3<sup>rd</sup> party howsoever called or described claiming through them or otherwise?***

Arguing this second issue, the learned counsel submitted that trespass as a relief is available to a party in possession at the time of the trespass.

He maintained that in a land matter, possession is key and being a question of fact, compelling evidence of the Claimant being in possession must be led to persuade the Court to hold that the Defendants or Adversary entered the land without the consent or approval of the party in possession and is set to occupy the land against the better title and interest of the Claimant.

He said that in this case, the Counter Claimants have adduced evidence of being in possession of the land in dispute and that the Defendants to the Counter Claim were and are still in trespass against the title and interest of the Counter Claimants.

He referred the Court to the exhibits tendered in this suit, particularly Exhibits A, B, C, E, F2, G1 – G16. He said that these documentary evidence together with the oral evidence of their witness are sufficient proof that they were in possession of the land in dispute.

He said that it was the Defendants to the Counter Claim that broke the fence erected around the land, entered same and took possession of the land. He emphasized that even though the Defendants to the Counter-Claim instituted this action, they failed to prosecute their claims and they did not lead any evidence to challenge the Counter-Claimants.

Counsel submitted that an award for damages automatically follows upon a holding of the Court that trespass has been established. He said that this is in addition to the uncontroverted evidence of the substantial losses suffered by the Counter Claimants for which they are entitled to damages. He pointed out that the parcel of land is vast and was fenced round as can be gleaned from Exhibits G1 – G16.

He submitted that the claim for the sum of N200,000,000.00 (Two Hundred Million Naira) as Damages for Trespass in the Counter-Claim will not be enough to reconstruct the damaged fence giving the prevailing economic circumstances where prices of goods, items and services have increased. He therefore urged the Court to grant the entire sum claimed in the Counter Claim and he cited the case of ***TAIWO KUPOLATI V. MTN NIGERIA COMMUNICATION LIMITED (2020) 16 W.R.N.89 AT 101-102.***

Furthermore, he urged the Court to grant an order of Mandatory and Perpetual Injunction against the Defendants to the Counter Claim in order to finally forestall and deter them from their continuing acts of trespass.

In conclusion, he urged the Court to grant the reliefs sought by the Counter Claimants.

I have carefully considered all the processes filed in this suit, together with the evidence led during the hearing and the address of the learned Counsel for the Counter-Claimants.

As I have already observed, the Defendants to the Counter Claim did not put up any defence to the Counter-Claim. Thus, the evidence of the Counter Claimants remains unchallenged.

The position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial court, which has a duty to ascribe probative value to it. See the following decisions on the point: *Monkom vs. Odili* (2010) 2 NWLR (Pt.1179) 419 at 442; and *Kopek Construction Ltd. vs. Ekisola* (2010) 3 NWLR (Pt.1182) 618 at 663.

Furthermore, where a Claimant has adduced admissible evidence which is satisfactory in the context of the case, and none is available from the Defendant, the burden on the Claimant is lighter as the case will be decided upon a minimum of proof. See: *Adeleke vs. Iyanda* (2001) 13 NWLR (Pt.729) 1at 23-24.

However, notwithstanding the fact that the suit is undefended, the Court would only be bound by unchallenged and uncontroverted evidence of the Claimant if it is cogent and credible. See: *Arewa Textiles Plc. vs. Finetex Ltd.* (2003) 7 NWLR (Pt.819) 322 at 341.

Even where the evidence is unchallenged, the trial court still has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim. See: *Gonzee (Nig.) Ltd. vs. Nigerian Educational Research and Development Council* (2005) 13 NWLR (Pt.943) 634 at 650.

Applying the foregoing principles, I will evaluate the evidence adduced by the Counter Claimants to ascertain whether they are credible and sufficient to sustain their Counter Claims.

I am of the view that the sole Issue for Determination in this suit is: ***whether the Counter Claimants are entitled to the reliefs claimed in their Counter Claim.***

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 follow:

- 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 tenor of their evidence the Counter-Claimants appear to be relying on the second, third and fifth means of proof, to wit: proof by the production of documents of title, by acts of ownership and acts of long possession and enjoyment of the land.

On the proof by the production of title documents, the Claimant tendered the following documents:

- 1) Deed of Assignment made on the 2nd of March 2004 which was admitted as Exhibit "A";*
- 2) Document titled: "Application for Land Development and Farming" dated 27/8/03 which was admitted as Exhibit "B";*
- 3) Two survey plans which were admitted in evidence as Exhibits "C1" and "C2" respectively; and*
- 4) A publication in the Nigerian Observer of Tuesday, December 4, 2007 in respect of their application for a Certificate of Occupancy which was admitted in evidence as Exhibit "D".*

However, the Counter Claimants' main documents of title are the Deed of Assignment which was admitted as Exhibit A and the document titled: "Application for Land Development and Farming" dated 27/8/03 which was admitted as Exhibit "B".

It is evident that Exhibit A is not a registered legal instrument so it cannot convey legal title to the land.

However, it is settled law that a purchaser of land who has paid and taken possession of the land by virtue of a registrable instrument which has not been registered acquires an equitable interest which can only be defeated by a purchaser for value without notice of the prior equity. See the following cases: *Agboola vs. U.B.A. Plc. (2011) 11 NWLR (Pt.1258) 375 at 415; Dauda vs. Bamidele (2000) 9 NWLR (Pt.671) 199 at 211; and Goldmark (Nig.) Ltd. vs. Ibafon Co. Ltd. (2012) 10 NWLR (Pt.1308) 291 at 349-350.*

In the recent case of: *Atanda vs. Commissioner for Lands and Housing, Kwara State & Anor. (2018) 1 NWLR (Pt.1599) 32 at 55, Sanusi JSC*, delivering the lead judgment of the Supreme Court restated the position thus:

***“A registrable instrument which has not been registered is also admissible only to establish or prove equitable interest or to prove payment of purchase price.”***

Flowing from the foregoing, I am of the view that although Exhibit A, *per se* cannot establish legal title to the land in dispute, it will suffice to vest an equitable interest on the Counter Claimants, which can only be defeated by a purchaser for value without notice of the prior equity. In the absence of any challenge to Exhibit A, I hold that it will suffice to establish the Counter Claimants’ title to the land in dispute.

The second document of title tendered by the Counter Claimants is the Application for land development which was admitted as Exhibit B. The point must be made that although the Land Use Act of 1978 vested lands in the state in the State Governors, customary land tenure still thrives particularly in areas where they have some traditional institutions which oversee land allocation, inheritance and dispute resolutions relating to land disputes. Some of these traditional institutions document land transactions by way of community approvals like Exhibit B.

In this suit, the Counter Claimants are relying on Exhibit B as a document of title. Again, it is evident that Exhibit “B” is not a registered legal instrument. However, at the trial, the Defendants to the Counter Claim did not adduce any evidence to challenge the validity of Exhibit “B”. In the absence of any challenge to Exhibit “B”, I hold that it will also suffice to establish the Counter Claimants’ root of title to the land in dispute.

On acts of ownership and possession, the Counter Claimants led unchallenged evidence to prove that immediately after they purchased the land, they took possession of the land and surveyed it.

They also erected a very extensive brick fence around the vast parcels of land and proceeded to apply for the issuance of Certificate of Occupancy as beneficial holder.

At the hearing, they tendered two survey plans which were admitted in evidence as Exhibits “C1” and “C2” respectively. They also tendered some photographs to show that the parcel of land was fenced round as can be gleaned from Exhibits G1 – G16.

They led unchallenged evidence to show that they had been in peaceable possession of the land, carrying out their agricultural livestock operations thereon without let or hinderance before the Defendants to the Counter Claim commenced their alleged acts of trespass.

The uncontroverted evidence of the Counter Claimants’ peaceful and undisturbed possession of the land amounts to acts of possession which is one of the ways of proving title to land. This is further proof of the Counter Claimants’ title. See: ***Section 35 of the Evidence Act, 2011.***

It is an established principle of law that where there is acceptable evidence that the party in possession had paid money before being put in possession and had remained in undisturbed possession, he has acquired an equitable interest which cannot be defeated by a subsequent purchaser of the legal state. See: ***OBIJURU V. OZIMS (1985) LPELR-2173(SC) (PP. 56-57 PARAS. F)***; and ***AJAYI V. OSUNUKU & ORS (2008) LPELR-8332(CA) (PP. 28-32 PARAS. E)***.

Furthermore, exclusive possession gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrongdoers except the person who can establish a better title. See the case of ***EKRETSU & ANOR V. OYOBEHERE & ORS (1992) LPELR-1099(SC) (PP. 27-28 PARAS. F)***.

From the foregoing, I hold that the Counter Claimants are entitled to a declaration that they are the owners of the vast parcels of land in dispute and are entitled to be issued with the Certificate of Occupancy in respect of the said parcels of land.

Furthermore, in the absence of any defence by the Defendants to the Counter Claim, I hold that their encroachment and forcibly entry into the Counter-Claimants' land amounts to trespass for which they are liable in damages.

On the claim for the sum of N200,000,000.00 (Two Hundred Million Naira) damages for trespass, encroachment and forcibly entry into the Counter-Claimants land, 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 Counter Claimants gave evidence of how the Defendants to the Counter Claim forcefully trespassed on the said land in dispute and destroyed their fence. They tendered some photographs which were admitted as Exhibits G1 – G16. However, they did not elaborate on the extent of destruction or losses occasioned by

the said acts of trespass. Going through the entire gamut of their evidence, there is no evidence of the quantum of damage suffered from the alleged acts of trespass by the Defendants to the Counter Claim.

Generally, the trial court has discretion as to the quantum of damages it would award in a claim of damages for trespass. The assessment does not depend on any legal rules, but the discretion of court is limited by usual caution or prudence and remoteness of damage when considering its award of damages. See: *U.B.N. v. Odusote Bookstores Ltd. (1995) 9 NWLR (Pt.421) pg. 558*; *Solanke v. Ajibola (1969) 1 NMLR pg. 45*; *ACB Ltd v. Apugo (2001) 5 NWLR (pt.707) pg. 653*; and *OYENEYIN & ANOR V. AKINKUGBE & ANOR (2010) LPELR-2875(SC)*.

I have already found in this judgment that the Counter Claimants have established a better title to the land in dispute and ascribed lawful possession to them. The law is well settled that trespass is actionable per se. This means that the entitlement to damages for trespass is not hinged on proof of actual or any damage by the Counter Claimants. See: *CHUKWUMA V IFELOYE (2008) 18 NWLR PT. 1118, 204*; and *REGISTERED TRUSTEES OF MASTER'S VESSEL MINISTRIES (NIG) INCORP V EMENIKE & ORS (2017) LPELR - 42836(CA)*.

However, where the Claimant did not lead sufficient evidence on the extent of injury or losses suffered, he is only entitled to nominal damages which is at the discretion of the Court using the test of a reasonable man. See: *Artra Industries (Nig.) Ltd. vs. N.B.C.I (1998) 4 NWLR (Pt.546) 357*; *Ogbechie vs. Onochie (1988) 4 NWLR (Pt.70) 370*. Consequently, the Counter-Claimants are entitled to nominal damages.

On the relief of a perpetual injunction against the Defendants to the Counter Claim, it is settled law that once trespass has been proved, an order of injunction becomes necessary to restrain further trespass. See: *ADEGBITE VS. OGUNFAOLU (1990) 4 NWLR (PT. 146) 578*; *BABATOLA VS. ALADEJANA (2001) FWLR (PT. 61) 1670* and *ANYANWU VS. UZOWUAKA (2009) ALL FWLR (PT. 499) PG. 411*.

In the event, I hold that the Counter Claimants are entitled to a perpetual injunction to restrain the Defendants to the Counter Claim, their Agents, privies or servants from any further acts of trespass on the Counter Claimants' land.

On the whole, the sole issue for determination is resolved in favour of the Counter Claimants.

The Counter Claims succeed and judgment is entered in favour of the Counter Claimants as follows:

- a) *A declaration that the Counter-Claimants are the owners of the vast Parcel of Land situate, lying and being at Uholor Village Area, of Benin City and*

*measuring 30.887 Hectares as delineated in Survey Plan No DSC/ ED /2003 / 89, dated 18/8/2003 registered in the Survey Department of the Ministry of Lands, Edo State and 3.212 Hectares as delineated in Survey Plan No DSC/ ED /2004 / 119 dated 5/11/2004 and have been in possession of same;*

- b) A declaration that the Counter-Claimants are entitled to be issued with the Certificate of Occupancy in respect of the said vast parcel of land having applied for same and publication thereon made without any objection;*
- c) N20,000,000.00 (Twenty Million Naira) damages for Trespass, encroachment and forcibly entry into the Counter-Claimants land lying and situate at Uholor Village Area plus maliciously damaging the brick wall fence erected to secure the said parcel of land;*
- d) Perpetual injunction restraining the Defendants to the Counter-Claim, their Agents, Servants, Privies and Collaborators from further encroachment of the Counter-Claimants' vast parcel of land and a further order directing the Defendants to the Counter-Claim, their Agents, Servants, Privies and Collaborators to vacate and give up any portion of land already occupied by them forthwith.*

*Costs is assessed at N200, 000.00 (Two Hundred Thousand Naira) in favour of the Counter Claimants.*

**P.A. AKHIHIERO**  
**JUDGE**  
**21/01/2026**

**COUNSEL:**

*A.B. Ogunsusi Esq. appearing*

*with Mrs. Taiwo Paul Osagie -----Counter-Claimants.*

*Unrepresented-----Defendants to the Counter Claim*