

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO
ON TUESDAY THE 24TH DAY OF FEBRUARY, 2026.

BETWEEN:

SUIT NO. B/286/2022

MR. AUGUSTINE EVBUOMWAN

MRS. JULIET EVBUOMWAN

**(SUING FOR THEMSELVES AND ON
BEHALF OF THE EVBUOMWAN FAMILY)**

}
} CLAIMANTS

AND

MR. ROWLAND EVBUOMWAN ----- DEFENDANT

JUDGMENT

The Claimants instituted this suit vide a Writ of Summons and Joint Statement of Claim filed on the 29th of March 2022 in which they claimed against the Defendant as follows:

- 1. A DECLARATION that the 1st son of the family (Mr. Courage Evbuomwan) is the rightful owner of the family House (Igiogbe) lying and situate at No.**

- 81A & B Wire Road, Benin City, Edo State, because according to the Benin Native laws and customs the family House (Igiogbe) is the inheritance of the Eldest Son of the Family which in this case is Mr. Courage Evbuomwan;*
- 2. A DECLARATION that the act of the Defendant amounts to wrongful conduct, trespass, forceful entry, unlawful and illegal sale or transfer of the Claimants' late father's estate (properties) without the knowledge, consent or approval of the Claimants, members and elders of the family;*
 - 3. A DECLARATION that the way, the Defendant took possession of the Claimants' late father's estate and sold or transferred same without the knowledge, consent or approval of the Claimants or any member of their family is illegal, unlawful, null and void;*
 - 4. AN ORDER that the Defendant vacates the family House (Igiogbe) that he violently, illegally and unlawfully took possession of because according to the Benin Native Laws and Customs the family House (Igiogbe) is the inheritance of the Eldest Son of the family which in this case is Mr. Courage Evbuomwan;*
 - 5. AN ORDER to the Defendant to render an unreserved apology to the Claimants, the entire members and Elders of the Evbuomwan family;*
 - 6. AN ORDER that there should be no further trespass, illegal entry and forceful acquisition of the Claimants' family house (Igiogbe) at No. 81A & B, Wire Road, Benin City, Edo State, by the Defendant, his Privies, Servants or Agents;*
 - 7. AN ORDER of perpetual injunction restraining the Defendant, either by himself, his Agents, Servants and/or Privies etc from any further act of trespass on the said family house situate at No. 81A & B, Wire Road, Benin City, Edo State; and*
 - 8. AN ORDER that the Defendant should pay the Claimants the sum of N60,000,000 (Sixty Million Naira) for the illegal, unlawful and forceful entry, trespass to the Claimants' late father's estate (including the family house/Igiogbe) and for the harassment, intimidation, shock and serious health challenges the Claimants and members of their family suffered as result of the Defendant conducts/actions.*

In proof of their case, the 1st and 2nd Claimants testified three witnesses and closed their case.

From the evidence which they adduced at the hearing, the Claimants' case is that the Defendant and themselves are members of the Evbuomwan Family, being the children of late Pa. Clement Idemudia Evbuomwan who died intestate sometime in the year 2003.

The Claimants alleged that after the death and burial of their Father, the Defendant started to insist that he must take possession of their late Father's Estate.

They said that all pleas and efforts by Members and Elders (Egbe) of the Family to the Defendant to be patient for them to share their father's property among the children were rejected by the Defendant.

They alleged that the Defendant tried to bribe the previous head of the family (Okaegbe), late Pa. Stephen Evbuomwan but he refused the bribe. They alleged that the Defendant unilaterally sold many of their late father's property before the sharing without consulting the family.

They alleged that the family house (Igiogbe) which the Defendant is laying claims to was built by their grandfather and inherited by their late father.

They stated that the first son of their father (Courage Evbuomwan) is the person entitled to inherit the family house (Igiogbe) under Bini native laws and custom.

They alleged that the elders of the family not minding what the Defendant had illegally and unlawfully done because he is their son, conveyed a meeting and shared the remaining property which the Defendant had not sold among the children of their late brother and unanimously decided that the properties the Defendant sold is his own inheritance.

The Claimants alleged that the Members and Elders of the Family ably led by one Pa John Ekuase, their uncle collectively resolved that the Family House should be given to Mr. Courage Evbuomwan who is the Eldest son of the Family and that the remaining land at Edosomwan which was not sold by the Defendant should be shared among the three sons of the Family.

They alleged that from their investigations, the properties sold by the Defendant and the rents which he has been collecting from tenants amounts to the sum of Twenty-Seven Million, Five Hundred and Five Thousand Naira.

They alleged that the Elders of their family mandated their family solicitor, Austin Ajayi Esq., to manage their father's estate pending when the Estate will share the property among the Children, but the Defendant forcefully took possession of the Estate, evicted the tenants and put new tenants in the houses.

They said that the Members and Elders (Egbe) of the Family upon hearing about the Defendant's behavior, instructed their Solicitor to write a letter to the Tenants placed who rented the houses from the Defendant, informing them about the illegality of their actions.

Furthermore, they alleged that the family also instructed their solicitor to write a petition to the Commissioner of Police to report the Defendant's conduct.

They alleged that the Commissioner of Police instructed the Defendant to stay away from the property, but he refused to yield the instruction.

The Claimants alleged that the Defendant unlawfully sold a Plot of Land at Nova Road, Ugbowo worth over Five Million Naira to a Church and they took the photograph of the church building on the land.

They alleged that the Defendant has refused to give account of the proceeds from their late Father's estate.

They alleged that the Document of Sharing dated the 2nd day of November 2013 being flaunted by the Defendant as the authentic document of sharing issued by the family was forged.

The Claimants alleged that the Family House (Igiogbe) consists of two flats in the same compound and the Defendant is illegally occupying and laying claim to the Family House which constitutes an Igiogbe which rightly belongs to the eldest son.

The Claimants alleged that on the 5th of October 2021, the Members and Elders of their Family came together and shared the remaining Estate of their late Father that was not sold or mismanaged by the Defendant.

They said that in the meeting it was collectively agreed that the Family House should be given to the Eldest Son of the Family, Mr. Courage Evbuomwan and that the remaining Land that was not sold by the Defendant should be shared amongst the Children of the Family.

The Claimants alleged that after the sharing, the Members and Elders (Egbe) of the Family instructed their Solicitors to prepare the authentic Deed of Sharing that would be binding amongst the Children and it was prepared.

Furthermore, they stated that the Family Solicitors were instructed to write a letter dated the 14th day of October 2021 to the Defendant informing him on how the property has been shared amongst the Children because he refused to attend the meeting and to also give account on how the Estate of their late Father was mismanaged.

They said that on the 20th of October 2021, the Defendant sent a belated letter threatening the Eldest Son, the entire Members and Elders of the Family and insisted that the Family House (Igiogbe) belongs to him.

They alleged that their Solicitors also petitioned the AIG and EFCC about the conduct of the Defendant.

They maintained that the bad behavior of the Defendant has brought untold hardship on them, the entire Members and Elders of the Evbuomwan Family, because of how the honourable and highly regarded Family name has been dragged to the mud hence they instituted this suit to seek redress.

Upon receipt of the court processes in this suit, the Defendant entered appearance and filed a Statement of Defence and Counter-Claim wherein he counter-claimed against the Claimants as follows:

- 1) A DECLARATION that the house known as No. 81a Wire Road, Benin City is a separate and distinct property from No. 81b Wire Road, Benin City;**
- 2) A DECLARATION that the house known as 81b Wire Road, Benin City does not form part of the Igiogbe of Late Clement Idemudia Evbuomwan who died intestate in 2003;**
- 3) A DECLARATION that the Defendant is the rightful owner of the house known as N0. 81A Wire Road, Benin City;**

- 4) A DECLARATION that the purported sharing prepared by one Aisosa Nosa Adams is null and void and of no legal effect;**
- 5) AN ORDER of perpetual injunction restraining the Claimants, their servants, agents, privies, assigns from interfering and disturbing the Defendant's interest in the property known as No. 81A Wire Road, Benin City in any way whatsoever; and**
- 6) General Damages of Five Million Naira.**

In defence of this suit and in proof of his Counter-Claim, the Defendant testified for himself and closed his case.

In his evidence, the Defendant stated that the Claimants and himself are children of their late father, Mr. Clement Idemudia Evbuomwan who died intestate in 2003.

He alleged that upon the demise of their father, he was the one taking care of his younger siblings as well as their father's remaining wives.

He alleged that his elder brother, Courage Evbuomwan never bothered how they fared, so he was saddled with the responsibility of catering for his father's remaining wives and his siblings.

He alleged that the portion of the property known as No 81A Wire Road was shared to him by the then Okaegbe of the family, Late Pa. Alex Osahon through a family sharing document which he tendered and was admitted as Exhibit "A" at the hearing.

He alleged that Courage Evbuomwan, who is the 1st son of the family was given House No. 81B Wire Road being the Igiogbe of their late father Late Pa. Clement Idemudia Evbuomwan.

He said that their late father left behind a canopy rental business, several plots of land and the properties known as No. 81 A & B Wire Road which he took over the management with the permission of the Okaigbe and other members of the family to enable him to raise the required funds to cater for the needs of the family.

He alleged that he took up their responsibilities until sometime in 2013 when the properties of their late father were shared among his siblings. He said that the canopy business folded up due to wear and tear on the canopy with no means of replacement because all the revenue raised went into catering for the needs of the family.

He alleged that the 1st son of their father (one Courage Evbuomwan) lived abroad and had not been home until over seven years after their father's demise. He said that he only came home for the final burial activities of their late father in year 2010.

According to him, after the burial ceremony, the said Courage Evbuomwan insisted that the properties of their late father should be shared among and the Okaegbe (Late Alexander Osahon) called a meeting in 2013 and shared the properties among the children of Late Pa Augustine Evbuomwan. He tendered a copy of the sharing document titled "THE SHARING OF THE ESTATE OF LATE MR. CLEMENT IDEMUDIA EVBUOMWAN dated the 2nd day of November 2013 which was admitted as Exhibit "A" at the trial.

He said that according to the family sharing made on the 2nd day of November 2013, the property known as No 81A Wire Road was shared to him while No. 81B Wire Road was shared to the 1st son (Mr. Courage Evbuomwan) being the house where their Late father lived, died and was buried to the knowledge of all and sundry.

He said that he never attempted to bribe Late Pa. Stephen Evbuomwan before the sharing. He said that the said Late Pa Stephen was regularly receiving free gifts from Courage Evbuomwan and he didn't like him because he requested free canopy and chairs for his daughter's wedding which he refused to oblige because it was the business the family was feeding from and this provoked him and he vowed to deal with him.

He said that it is for that reason that the said Pa. Stephen Evbuomwan refused to sign his column of the sharing document even though he was present and witnessed the sharing of their late father's property at the meeting called by the Okaegbe (Pa. Alexander Osahon).

He maintained that the properties known as No. 81 A & B Wire Road are not the Igiogbe of their grandfather and that their father Late Clement Idemudia Evbuomwan did not inherit No 81 A&B Wire Road as an Igiogbe, rather he inherited all his father's properties (Late Pa. Osaigbovo Evbuomwan) as the only child of his father.

He denied any mismanagement or embezzlement of money from the estate of his Late father.

He alleged that he was not invited to any meeting of sharing done on the 5th day of October 2021 because there cannot be a re-sharing of the estate of their late father which had already been shared in 2013.

He said that one Austin Ajayi Esq. was never their family solicitor; but was hired by Mr. Courage Evbuomwan to do his bidding. He said that all the petitions, arrests and detention were carried out by Austin Ajayi Esq., upon the instigation and instruction of Courage Evbuomwan.

He alleged that it was only his mother (Madam Osadebamwen Evbuomwan) and his siblings who lived with their father at No. 81B Wire Road, Benin City while the other wives and concubines of Late father lived with their mothers in houses around Benin City.

He said that the House known as 81A Wire Road, Benin City is a passage house which his father rented out to tenants and does not form part of his Igiogbe.

He maintained that he is the rightful owner of the property known as No. 81A Wire Road, Benin City to the exclusion of any other being the 2nd son of their late father and by virtue of the Sharing Document which was admitted as Exhibit "A".

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

In his final written address, the learned counsel for the Defendant, *E.O. Afolabi SAN* posited that in proof of their case, the Claimants called some witnesses without tendering a single document to corroborate their case.

He said that the Claimants also pleaded several documents which they claimed they would rely upon in proof of their case, but none was tendered. He referred the Court to paragraph 16 of their Joint Statement of Claim where the Claimants pleaded a letter of authority dated 14th day of November 2023 which was never tendered.

He said that they equally pleaded a letter dated 19/3/2021 which they claimed their solicitor wrote to the tenants on the property in dispute; another letter written to the Commissioner of Police dated 19/2/2020; and another one dated 29/12/2020 at

paragraphs 19 and 20 of their Statement of Claim but they failed to tender any of them.

Furthermore, he said that the Claimants also pleaded a picture of the Church which they claimed was erected on a land which they claimed the Defendant sold but they also failed to tender same.

Again, he posited that the Claimants pleaded that the document of sharing which the Defendant was parading is a forged document, but they failed to tender the said purportedly forged document of sharing neither did they give particulars of the forgery. He submitted that the legal implication is that same was not proved and he relied on the case of *EZENWA & ORS v OKO & ORS (2008) LPELR 1206 (SC)*.

Furthermore, he posited that the Claimants never tendered the original copy of the document of sharing which they referred to at paragraph 23 of their Joint Statement of Claim.

He referred to several other documents which the Claimants mentioned but failed to tender at the hearing and he relied on the case of *ADISA v STATE (1991) (PT. 168)* where *Niki Tobi JCA* (as he then was) stated thus:

“Judges are not allowed by the law to speculate or conjecture on possible facts. They do not have such jurisdiction.”

Counsel submitted that the omission to tender the said documents was deliberate and that the legal implication is that if the Claimants had tendered the said documents, the said documents would have been adverse to their case and he relied on *Section 167(d) of the Evidence Act 2011* and the cases of *SULE v STATE (2009) 17 NWLR (PT 1169) 33; OGBUANYINYA & ORS v OKUDO & ORS (NO. 2) (1990) 4 NWLR (PT 146) @ 570* and *OLANREWAJU v GOVERNOR OF OYO STATE (1992) 9 NWLR (PT 265) 335*.

He submitted that the failure of the Claimants to tender the documents which they pleaded is fatal to their case since the documents allegedly contains the terms that form the basis of their claim.

He maintained that the absence of the documents means that there is no credible evidence to support their assertions. He submitted that a party that seeks a

declaration must lead credible evidence to support his case and he relied on the cases of *OKOYE & ORS v NWANKWO 92014 LPELR 23172 (SC)* and *OBAWOLE v WILLIAMS (1996) LPELR 3158 (SC)*.

He submitted that the refusal of the Claimants to tender the documents which they pleaded in support of their case suggests that the document either does not exist or contains terms that are unfavourable to the Claimants' case.

Consequently, he urged this Court not to rely on any oral evidence attempting to establish the contents of the documents which they failed to tender as this would violate *SECTION 128(1) OF THE EVIDENCE ACT 2011* which states: -

“When the terms of a contract or grant have been reduced to the form of a document, no evidence shall be given in proof of the terms of such a contract or grant except the document itself.”

Furthermore, learned counsel submitted that it is a settled principle of law that a court of law cannot speculate on the contents of a document that has not been properly tendered and admitted in evidence and he relied on the cases of *EZE v. OKOLONJI (1997) 7 NWLR (Pt. 513) 515*; *OLALOMI IND. LTD v. NIDB LTD (2009) 16 NWLR (Pt. 1167) 266* and *DUMEZ NIG. LTD v. NWAKHOBA (2008) 18 NWLR (PT. 1119) 361*.

Learned counsel posited that the foundation of the Claimants' case is that both houses 81A and 81B are Igiogbe. He said that the CW2 under cross examination admitted that the Claimant father was buried in one of the rooms at No. 81B –Wire Road and he equally admitted that under Benin Native Law and Custom, the Igiogbe is the house where a man lived and is buried. He said that the CW2 equally admitted that there are two buildings which are houses numbers 81A and 81B Wire Road and that the deceased was buried in house number 81B, Wire Road, Benin City.

Counsel submitted that this evidence elicited under cross-examination has completely destroyed the case of the Claimants that both houses are Igiogbe. He emphasized that both CW1 and CW2 agreed that the father of the Claimants and the Defendant was buried at No. 81B Wire Road.

He said that the 1st Claimant under cross examination admitted that there are two buildings at No 81 Wire Road and he stated that Igiogbe is the house where the deceased lived and was buried.

He submitted that the Claimants have no locus to file this suit because none of them is claiming the said property.

He submitted that it is trite law that when a property has been given to a party or a party has divested his ownership in a property, the only person who can validly give evidence in respect of same is the person that now owns the property, who can testify through his attorney. He said that the 1st and 2nd Claimants have not told this court that they are the lawful Attorneys of Mr. Courage Evbuomwan. He referred the Court to the case of ***BUSARI & ORS v OGUNTADE (2016) JELR 40951 (CA)*** where the Court restated the principle that you cannot eat your cake and have it.

He posited that from paragraphs 1, 2 and 13 of the Joint Statement of Claim the purported properties have been shared and they never sued on behalf of the person now claiming the property, who is Mr. Courage Evbuomwan.

Furthermore, learned counsel submitted that the suit is incompetent because the Claimants and the Defendants are members of the same Evbuomwan family. He relied on the case of ***AYORINDE v. ONI (2000) 3 NWLR (Pt. 649) 348*** where the Court held that when an action is not properly constituted the court should strike it out.

He urged the Court to strike out the Claimants' suit since they are busy bodies in other persons matters and he cited the case of ***UBA PLC v. EKANEM CM.D PARAGON EG LTD) & ANOR (2009) JELP- 47388 CA.***

He referred to the case of ***OSEWENGIE v. OSEMWENGIE (2012) JELR 34710 (CA)*** where the Court of Appeal held that an Igiogbe cannot be the whole three houses but one of the houses where the deceased lived and died. He also relied on the cases of ***ASAOLU & ORS v OMOREGIE 92020) LPELR 50125 (CA)*** and ***IMARUEHERU & ANOR v AIGUOKURUEGHIAN & ORS (2021) LPELR 58405 (SC).***

Finally, he urged the Court to dismiss the Claimants' claims and grant the Defendant's Counter-Claim.

In his final written address, the learned counsel for the Claimants, ***H.O. Osatohanmwun Esq.*** formulated three issues for determination as follows:

- 1) Whether the Claimants have successfully proved their case on a balance of probability as required by law;
- 2) Whether the Defendant having not adduced any evidence to sustain his counter claim is entitled to the grant of the counter claim; and
- 3) Whether the Claimants are entitled to damages.

Thereafter, the learned counsel argued the three issues seriatim.

ISSUE ONE:

Whether the Claimants have successfully proved their case on a balance of probability as required by law.

Learned counsel submitted that parties are bound by their pleadings which must be clear, explicit and specific and he cited the case of ***YAHAYA V. DANKWANBO (2016) 7 NWLR pt 1511 page 284 @336 para C-E***

He maintained that evidence of facts not pleaded will be discountenanced and he relied on the case of ***OGBORU V OKOWA (2016) 11 NWLR pt 1522 pg 84 @ 150 para D.***

He posited that in their Joint Statement of Claim, the Claimants and their witnesses stated all their facts and attached some documents which they wanted to tender as exhibits in this case especially the document which is titled Deed of Sharing dated 13/10/2021 but unfortunately this document was never tendered in the course of the proceedings due to the inadvertence of their counsel.

He urged the Court not to visit the error or sin of the counsel on the Claimants and relied on the case ***ODU V. FAWEHINMI (2005) 15 NWLR (pt 949) 602***

He urged the Court to take a forensic look at the documents, especially the Deed of sharing dated 13/10/2021. He relied on the case of ***LSWC V SAKAMORI CONSTRUCTION (Nig) ltd (2011) 12 NWLR pt 1262 pg 569 @608***, where the Court of Appeal held that: ***"Court also being courts of equity, with a mandate to administer Law and equity concurrently, yet with equity prevailing in the event of conflict, the court should always stives to ensure that justice is done equitably"***

Learned counsel submitted that in a representative action such as this, both the named Claimants and those they represent are parties to the action. He referred the Court to the case of ***RE: 11 NWLR pt. 1576 page MBANEFO V MOLOKWU (2014) 6 NWLR pt 1403 page 377 @ 425 para C-D.***

He maintained that the Claimants as members of the Evbuomwan family have the *locus standi* to institute this suit in a representative capacity acting for themselves and the Evbuomwan family so long as they have a right or interest in protecting the family property. He cited the case of ***SPDC V. AKPOMUDJE & ORS (2018) LPELR 46105 CA Ratio 11.***

He emphasised that the Claimants and those they represent in this case have common interest both legal and equitable interest which need to be protected and should not be altered especially their ancestral home (Igiogbe) House No. 8 I A & 81 B Wire Road, Benin City which was built by their forefather and inherited by the late Clement Idemudia Ebuomwan and by extension inherited by the eldest Son of Late Clement Idemudia Evbuomwan in line with the primogeniture principle whereby every first son of a Benin man inherits his late father's Igiogbe whether or not the man dies interstate or testate.

He maintained that the Igiogbe is seen as the ancestral home of the family and it is an inheritance that cannot be shared twice. He said that the eldest surviving son after the death and final burial of his late father is to inherit the property from generation to generation while the uncles, aunties and other family relations proudly believe the property or house is their ancestral home where they can converge, hold meetings and discuss matters of common interest that will move the family forward.

He said that the concept of the principal house otherwise known as 'Igiogbe' under the Benin customary law has been entrenched into the Nigerian legal system by the highest Court of the land flowing through a plethora of judicial pronouncements on it.

He said that the law of succession to real estate under the Benin customary law is based essentially on the strict rule of primogeniture where the principal house or the Igiogbe of a deceased Benin man is, under the custom inherited, absolutely by the eldest surviving son to the exclusion of all other children of the deceased after he

has performed the second burial ceremony of his deceased father in accordance with the custom. He referred the Court to the following the cases:

Madam I. Arase v. Peter U Arase (1981) 5 S. C. 33;

Idehen v. Idehen [1991] 6 N.W.L.R. (Pt. 198) 382;

Osula v. Osula [1995] 9 N.W.L.R. (Pt. 419) 259;

He also cited an article by *Prof. O. Aigbovo: 'The Principal House in Benin Customary Law,' UBLJ [2005] 16.*

Learned counsel posited that the late Clement Idemudia Evbuomwan did not build his own house as distinguished from the above-named cases and he only inherited his father's house and that of his grandfather.

He said that the eldest son having performed all the burial rights including the "UKOMWEN" inherited his father's Igiogbe which was never disputed by the Defendant.

Counsel also referred to the book titled: *"A SUPPLEMENT TO THE HANDBOOK ON SOME BENIN CUSTOMS AND USAGES, PROPERTY SHARING"* issued by the Benin Traditional council, on the authority of the Omo N'Oba Erediawa, the Oba of Benin.

He urged the Court to resolve issue one in favour of the Claimants.

ISSUE 2:

Whether the Defendant having not adduced any evidence to sustain his Counter Claim is entitled to the grant of the Counter Claim.

He submitted that the case of the Respondent is very porous and weak and the sole testimony of the Defendant cannot substantiate any claim as it lacks the material facts for credible evidence.

He said that the reactions of the Defendant under cross-examination reveal that the Defendant's father (Late Clement Idemudia Evbuomwan) never built a house while he was alive but had landed property and other business outfits.

He said that the Exhibit "A" tendered in this case by the defendant purported to have been made by the Evbuomwan and Osahon family dated 2/ 11/2013 had only one person (Mr. Alexander Osahon) head of Osahon family that signed the exhibit. He said that Mr. John Ekuase's column was never signed including that of Mr. Stephen I. Evbuomwan. He pointed out that Mr. John Ekuase testified as CWI for the Claimant on the 19/9/2023 and signed as No. 2 in the document titled Deed of sharing of Late Clement Idemudia Evbuomwan by the Evbuomwan family dated 13/ 10/2021 filed before this Honourable Court but which was not tendered as an exhibit. He posited that Exhibit "A" was made for the purpose of this case.

He said that the evidence of the Defendant is hearsay and inadmissible evidence especially as it relates to Exhibit "A", which he said has a personal purpose to serve.

He said that the Defendant failed to call Mr. Alexander Osahon, the only person who signed and executed Exhibit "A" while the other columns in the exhibit remained unsigned. He said that a doubt and a gap exist which cannot be filled by this Honourable Court.

He submitted that admissibility is one thing while the probative value that may be placed on the document is another and he cited the case of ***DELEK (NIG) LTD V. OMPADEC (2007) 7 NWLR pt 1033 p. 402 @441 para D-F.***

He urged the Court to expunge or at least disregard or attach little or no weight to Exhibit "A".

He submitted that the Defendant attempted to prove adverse possession which cannot defeat the Claimants act of possession gleaned from the Claimants' evidence of Benin tradition, law and custom from the time immemorial. He relied on the case of ***GEOFFERY ANUKAM V. FELIX ANUKAM (2008) VOL. 159 LRCN P.33 @ 37 R.4.***

ISSUE 3:

Whether the Claimants are entitled to damages.

Counsel submitted that the nature of the reliefs sought by the Claimant is for detinue and the Claimants are praying this Honourable Court for damages against the

Defendant for detention and refusal to deliver up possession of the family Igiogbe and other properties belonging to their late father that are in his possession.

He submitted that an award for damages for detinue can be entertained if the action is brought not less than six years from when the course of action arose and he relied on the case of *CHIGBU V. TONIMAS (NIG) LTD (2006) 9 NWLR, Part 984, Page 189 @ 214, Para E-G*.

He said that the Claimants made several demands on their own and through their lawyer to the Defendant within the period of six years.

He submitted that the Claimants have made a case for trespass and detinue against the Defendant and are entitled to damages.

I have carefully considered all the processes filed in this suit, together with the evidence led, the exhibit admitted in the course of the hearing and the addresses of the respective Counsel to the parties.

Upon a careful examination of the Issues formulated by learned counsel for the parties, I am of the view that the two issues for determination in this suit are:

- (i) Whether the Claimants have proved their Claims on the preponderance of evidence to enable the Court to grant their reliefs; and*
- (ii) Whether the Defendant has proved his Counter-Claims on the preponderance of evidence to enable the Court to grant his reliefs.*

I will now proceed to resolve the two issues for determination seriatim.

ISSUE 1:

Whether the Claimants have proved their Claims on the preponderance of evidence to enable the Court to grant their reliefs?

In all civil suits, the burden of proof is on the Claimant. *Section 131(1) of the Evidence Act, 2011* States thus:

"Whoever desires any Court to give judgment as to any legal right to liability dependent on the existence of facts which he asserts must prove that those facts exist."

Furthermore, *Subsection (2) of the same section* provides: "*when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*"

It means that 'He who asserts must prove his assertion.' The judicial decisions on this point are innumerable. See the following cases: *Kwasalba (Nig.) Ltd. Vs. Okonkwo (1992) 1 NWLR (Pt. 218) 407 @ 417; Imana Vs. Robinson (1979) 3 - 4 SC. 1 and Osawaru Vs. Ezeiruka (1978) 6 - 7 SC 135.*

In this case, the burden of proof lies with the Claimants who have come to Court seeking some declaratory reliefs, injunction and damages against the Defendant in respect of his alleged acts of trespass on their family property.

Essentially, the substratum of this case is on the inheritance of the family property of late Pa. Clement Idemudia Evbuomwan who died intestate sometime in the year 2003. The contest is mainly in respect of the ownership of the family house referred to as the "Igiogbe" under Benin native law and custom. In the suit, the dispute is between the Claimants who are suing for themselves and on behalf of the Evbuomwan Family and the Defendant who is the second son of the deceased.

Before I examine the evidence adduced by the parties at the hearing, I think it is expedient for me to give some legal perspective on the concept of Igiogbe as expounded by the superior Courts in decided cases over the years.

From a long line of cases, the Supreme Court has held that under Benin Native Law and Custom, "Igiogbe" meant a principal house where a deceased Benin man lived and died; the right to inherit and possess such property vest only in the eldest son. The tradition takes precedent over and above the wishes of a deceased father no matter how strong he feels against his son as the prospective heir. It is a right vested in the eldest son, and which cannot be divested by means of disinheritance. See the following cases: *ARASE V. ARASE (1981) 5 SC 33, IMADE V. OTABOR (1998) 4 NWLR (PT. 544) PAGE 20, UWAIFO V. UWAIFO (2013) 10 NWLR (PT. 1361) PAGE 185 AT 206.*

Furthermore, in the case of *VICTOR AYEMWENRE EIGBE ANOR V. BENJAMINE EIGBE ANOR (2013) LPELR - 20292 (CA)* the Court of Appeal held that a Bini man can only have one Igiogbe and not two. The same stand was

taken by the same Court in the case of ***IGORI V. IGORI ORS (2013) LPELR - 21027 (CA)***.

This stand of the Court of Appeal was based on the earlier decision of the Supreme Court in the case of ***AGIDIGBI V. AGIDIGBI (1996) LPELR -248 (SC) (1996) 6 NWLR (PT. 454) PAGE 300*** where it was held that although three distinct houses were involved, the evidence before the Court was that only one of the three houses namely No 34C was the Igiogbe of the testator.

In Bini Native Law and Custom, the customary law of the inheritance of an Igiogbe is a custom of a general application and it is judicially noticed. See the following cases: ***EGHAREVBA V. OKUNGHAE (2001) 11 NWLR (PT.724) 318; LAWAL-OSULA V LAWAL - OSULA (1995) 9 NWLR (PT. 544) 20; AGIDIGBI V. AGIDIGBI (1996) 6 NWLR (PT.454) 30; IMADE V. OTABOR (1998) 4 NWLR (PT. 544) 20*** and ***OGBANON V. REGISTERED TRUSTEES CCC. CA (2002) 1 NWLR (PT. 749) 675***.

These plethora of authorities have left no one in doubt that Igiogbe in Benin Customary Law is a principal house where a deceased, Benin man lived and died. This is an ancestral home. It is not vacant land whether adjacent or not. See the case of ***UWAIFO V. UWAIFO & ORS (2013) LPELR-20389(SC) (PP. 16-17 PARAS. C)***.

In the celebrated case of ***IDEHEN VS. IDEHEN (1991) 6 NWLR (PT. 198) 382***, the apex Court emphasized that the Bini Custom of Inheritance fundamentally lists the Igiogbe as the sole inheritance of the first surviving son of the deceased who performs, the burial ceremony of his late father. All other properties are subjected to the sharing by elders in the family presided by the Okaigbe. It is not part of Bini Custom that the beneficiaries must be present or that the gates must be represented. See: ***OGBEBO V. OGBEBO & ORS (2017) LPELR-45678(CA) (PP. 23-24 PARAS. D)***.

Applying the foregoing principles to the instant case, there is a serious dispute of what constitutes the Igiogbe of the deceased Pa. Clement Idemudia Evbuomwan. The Claimants' case is that the deceased's Igiogbe are the two buildings at No. 81A and 81B Wire Road, Benin City. They maintain that the two buildings being the Igiogbe, the eldest son of the deceased, to wit: Mr. Courage Evbuomwan is entitled

to inherit both buildings. They allege that the Family has already allotted the two buildings to the eldest son vide a sharing document which they failed to tender at the hearing.

On the other hand, the Defendant has maintained that the Igiogbe is not the two buildings but house No.81B where he alleged his father lived, died and was buried. He said that House No.81A is a passage house which his father rented out to tenants in his lifetime. Furthermore, he testified that the family has already allotted House No.81 B to his eldest brother while House No.81A was allotted to him. At the trial, he tendered a Sharing Document which was signed by only one of the three family elders.

The key issue is to determine which of the two versions is correct.

Starting with the version of the Claimants, it must be observed that the two Claimants who instituted this suit for themselves and on behalf of the Evbuomwan family did not institute this suit on behalf of Mr. Courage Evbuomwan, the person who is entitled to inherit the Igiogbe. Under cross examination, they admitted that they are not claiming any of the properties in dispute.

In this suit, the learned counsel for the Defendant has challenged the right of the Claimants to institute this suit since they are not direct beneficiaries of the deceased's estate.

I am inclined to agree with the learned counsel that the proper person to institute the suit ought to be the eldest son who is entitled to inherit the Igiogbe of his late father having performed the burial. In his absence, I think he should have given a Power of Attorney to the Claimants to sue on his behalf and not on behalf of the entire Evbuomwan family. From the facts, the entire Evbuomwan family are not the beneficiaries of the disputed properties.

However, the learned counsel for the Claimants has seriously contended that the Igiogbe in dispute was not built by their late father but is an ancestral home which constitutes family property for the use of the Evbuomwan family. Viewed from that perspective, it may be difficult to hold that the Claimants lack the locus standi to institute this suit. I therefore hold that they have sufficient interest in the deceased's estate to institute the suit.

Coming to the vexed question of whether the two houses constitute the Igiogbe of the deceased, the Claimants themselves testified that there are actually two buildings in the compound identified as House No.81A and House No.81B. Furthermore, they admitted that the deceased was buried in House No.81B. It is not in dispute that the said House No.81B has already been allotted to the eldest son, Mr. Courage Evbuomwan. The controversy is whether, the eldest son is entitled to the two buildings as asserted by the Claimants.

On the authorities earlier cited, it is settled law that Igiogbe in Benin Customary Law is the principal house where a deceased, Benin man lived and died. See the case of *UWAIFO V. UWAIFO & ORS (2013) LPELR-20389(SC) (PP. 16-17 PARAS. C)*.

In the case of *AGIDIGBI V. AGIDIGBI Supra*, the Apex Court held that although three distinct houses were involved, the evidence before the Court was that only one of the three houses namely No 34C was the Igiogbe of the testator.

Furthermore, in the case of *OGBEBO V. OGBEBO & ORS (2017) LPELR-45678(CA) (PP. 23-24 PARAS. D)* the Court held that since the Igiogbe has been duly shared to the first son, he cannot quarrel with the way and manner the other properties were shared out to the other beneficiaries.

Coming to the instant case, from the totality of the evidence before me, I am satisfied that the deceased's Igiogbe is House No.81B where the deceased lived, died and was buried. From the evidence, the said Igiogbe has been allotted to the eldest son who incidentally is not a direct party in this suit. Even if he was a direct party, I don't think he is entitled to inherit the second House No.81A which is not the Igiogbe. The allegation that the property was shared to him is baseless. The Claimants mentioned a document of sharing which they failed to tender at the hearing. As a matter of fact, they mentioned several documents but failed to tender any of them. The Claimants' case is palpably weak.

Juxtaposed with the evidence adduced by the Defendant on the Igiogbe, I prefer that of the Defendant. The failure of the Claimants to tender any document seriously weakened their case. The mere fact that the Defendant did not call many witnesses is not material. His sole testimony is sufficient; it should be stressed that it is the qualitative and not quantitative character of evidence that is required by the law. The law does not require a particular quantity of evidence or witnesses for proof of any

fact. A credible evidence of a single witness could be enough and more so even in criminal trials where the standard of proof is higher, evidence of a single witness can ground a conviction except where corroboration is required. See *Amadi V. Amadi (2011) 15 NWLR (Pt. 1271) 437 and 7Up Bottling Co. Ltd & Ors V. Oloyede & Ors (2013) LPELR 22153*.

The Claimants did not lead any credible evidence in respect of the claims of embezzlement of the proceeds of the deceased's estate. The spurious allegations were not substantiated. None of the documents pleaded were tendered. The claims are bound to fail.

From the foregoing, I hold that the Claimants have not proved their Claims on the preponderance of evidence to enable the Court to grant their reliefs. Issue one is resolved against the Claimants.

ISSUE 2:

Whether the Defendant has proved his Counter-Claims on the preponderance of evidence to enable the Court to grant his reliefs.

It is settled law that a Counter Claim is a separate, independent and distinct action from the main claim. The burden of proof is on the Counter Claimant to prove the Counter Claim by credible evidence just as in the main claim. See: ***DOZZY GROUP OF COMPANIES LTD V. OKEKE (2016) LPELR-41522(CA) (PP. 15 PARAS. C)***.

Though an offshoot of the main claim, to be entitled to judgment on the Counter Claim, the Counter Claimant like the Claimant in the main action must succeed on the strength of his Counter-Claim and not on the failure or weakness of the Claimant's case. The onus of proof on the Counter-Claimant is not discharged by the failure of the Claimant's case.

The onus of proof lies on the Counter-Claimant to prove the averments in his Counter-Claim on the preponderance of evidence. See ***Unokan Ent. Ltd V. Omuvwie (2005) 1 NWLR (Pt. 907) 293; Usman V. Garke (2003) 14 NWLR (Pt. 840) 261 and Ogbonna V. A.G. Imo State (1992) 1 NWLR (Pt. 220) 647***.

In this suit, the Defendant/Counter-Claimant is claiming some declaratory, injunctive and compensatory reliefs in respect of the houses at No. 81A and B Wire Road, Benin City

In spite of the independent and distinct nature of the Counter-Claim from the main Claim of the Claimants as in this case, where however the claims of the respective rival parties are the direct opposite of each other, it is evident that the dismissal of the main claim will invariably be advantageous to the success of the Counter-Claim. See the case of ***OKAFOR & ANOR V. OKAFOR & ANOR (2016) LPELR-40457(CA)(PP. 82-83 PARAS. D)***.

Coming to the instant case, while considering the main Claim, I made some salient findings on the status of the two houses in dispute in this Counter-Claim.

In his Counter-Claim, the Defendant/Counter-Claimant is seeking some declaratory and injunctive reliefs in respect of the two houses. In view of my findings under Issue One, these reliefs are bound to succeed.

The Defendant/Counter-Claimant is also seeking General Damages of Five Million Naira.

It is trite law that in a claim for trespass to land, any slight disturbance to the possession of the land by a person who cannot show a better title or right to possession, will suffice. See ***SOLOMON & ORS v. MOGAJI & ORS (1987) 11 S.C. Pg.1; EZE v. OBIEFUNA (1995) 6 NWLR (Pt. 404) Pg. 639***.

Accordingly, to succeed in a claim for general damages in an action for trespass, the Claimant need not prove any injury, as damages on such a claim are awarded to the even if he suffers no injury from the wrongful act of the Defendant. That is why it is said that trespass is actionable per se. However, where there is no actual injury, the damages to be awarded is nominal. See ***ELOICHIN (NIG) LTD V. MBADIWE (1986) 1 NWLR (PT. 14) PG. 47 AT 61 and ONYEMEH & ANOR V. IWUEZE & ANOR (2013) LPELR-21879(CA) (PP. 63-64 PARAS. B)***.

In the instant case, the Defendant/Counter-Claimant has not shown what he actually suffered from the Claimants' acts of trespass. Thus, he is only entitled to nominal damages.

On the whole, this second issue is resolved in favour of the Defendant/Counter-Claimant.

In conclusion, the Claimants' claims are dismissed and the Counter-Claims of the Defendants are granted as follows:

- 1) A DECLARATION that the house known as No. 81A Wire Road, Benin City is a separate and distinct property from No. 81B Wire Road, Benin City;*
- 2) A DECLARATION that the house known as No. 81A Wire Road, Benin City does not form part of the Igiogbe of Late Clement Idemudia Evbuomwan who died intestate in 2003;*
- 3) A DECLARATION that the Defendant is the rightful owner of the house known as No. 81A Wire Road, Benin City;*
- 4) A DECLARATION that the purported sharing prepared by one Aisosa Nosa Adams is null and void and of no legal effect;*
- 5) AN ORDER of perpetual injunction restraining the Claimants, their servants, agents, privies, assigns from interfering and disturbing the Defendant's interest in the property known as No. 81A Wire Road, Benin City in any way whatsoever; and*
- 6) General Damages of N1,000,000.00 (One Million Naira).*

The Claimants shall pay the sum of N200,000.00(Two Hundred Thousand Naira) to the Defendant/Counter-Claimant as costs.

P.A. AKHIHIERO
JUDGE
24 /02/2026

COUNSEL:

H.O. Osatohanmwun Esq-----Claimants.

E.O. Afolabi SAN-----Defendant/Counter-Claimant