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 11TH DAY OF MAY, 2026.

BETWEEN: ***SUIT NO. B/121/202O***

DEACON COLLINS NWAGBUOGWU ----------CLAIMANT

AND

1. ***COMPTROLLER GENERAL, NIGERIA IMMIGRATION SERVICE***
2. ***CHRISTOPHER ODIASE***
3. ***CATHERINE UZZI***

----------DEFENDANTS

JUDGMENT

The Claimant's extant claim is his further amended statement of claim dated **25/07/2022** and filed on the **26/07/2022** wherein he seeks the following reliefs against the Defendants:

1) ***A Declaration that the Claimant is the owner and in possession of the parcel of land measuring an area of 9159.993 Square Metres bounded by Beacon No:SC/EDR2570Z9, SC/EDR2571Z9, SC/EDR2572Z9 and SC/EDR2573Z9***

respectively particularly shown/delineated on Survey Plan No. GEO: 638:2017:ENG-EDO lying/situate at Ikhueniro, Benin City, Edo State and thereby entitled to apply and be granted statutory right of occupancy over same;

2) ***A Declaration: that the unwholesome act of the 2nd Defendant entering the Claimant's land with his confederates all acting on the instruction of the 1st and 3rd Defendant to demolish the Claimant's peripheral fence and actual destruction of a total number of 10,000 blocks upon the Claimants land measuring an area of 9159.993 Sq Metres bounded by Beacon No: SC/EDR2570Z9, SC/EDR2571Z9, SC/EDR2572Z9 and SC/EDR2573Z9 respectively particularly shown/delineated on Survey Plan No. GEO: 638:2017:ENG-EDO lying/situate at Ikhueniro, Benin City amounts to trespass;***
3) ***N5,000,000.00 (Five Million Naira) only being special damages for the trespass committed by the Defendants on the Claimant's Land; and***
4) ***N1,000,000.00 (One Million Naira) being cost of filing this action.***

At the hearing, the Claimant testified, called three witnesses and closed his case.

Despite several hearing notices served on him, the 1st Defendant did not testify or lead any evidence in defence of this suit.

The 2nd & 3rd Defendants testified in defence of this suit and closed their case.

From the evidence which he adduced at the trial, the Claimant's case is that he acquired a piece of land at Ohen-Igie Family Land Ikhueniro, Uhunmwode Local Government Area, Edo State Benin City, in the year 2012 measuring an area of 200ft by 500ft and since then he has been enjoying peaceable possession of same.

The Claimant alleged that the said parcel of land measures an area of 9159.993 Square Metres, and is bounded by Beacon Nos: SC/EDR2570ZG, SC/EDR2571ZG, SC/EDR2572ZG and SC/EDR2573ZG respectively, particularly shown/delineated on Survey Plan No. GEO:638:2017: ENG-EDO.

The Claimant alleged that he acquired the said land from one Chief Godwin Osagie Idehen(deceased) the then Ohen-Igie of Ikhueniro Community for valuable consideration. The Deed of Transfer made on the 13th of February 2012 was admitted in evidence as Exhibit "B".

The Claimant also alleged that his Predecessor-In-Title got a community grant of the land measuring 200ft X 500ft (Two Hundred Feet by Five Hundred Feet) vide Ikueniro Community Approval dated 05/04/1977. The original copy of the said approval given to the Claimant's Predecessor in Title was admitted as Exhibit "A" and Survey Plan: No GEO: 638: 2017 was admitted in evidence as Exhibit "G" while the Sketch Plan was admitted as Exhibit "G1".

The Claimant alleged that he also exercised positive acts of possession over his said piece/parcel of Land by erecting peripheral fence on same and moulded 10,000 blocks and heaped several tips of sharp sand and stones on the land.

He said that he mobilized masons to the land on 26/09/2017 to complete the fencing of the land and that about 13:00 hours while his manager and masons were on the site working, the 2nd Defendant appeared on the site wearing Nigeria Immigration Service uniform with four other fierce looking men wearing Immigration Camouflage uniforms and they drove away his workers from his site.

The Claimant alleged that his manager inquired from them the reason for chasing away his masons, but the 2nd Defendant kept silent while he and his men used a sledgehammer to destroy the Claimant's fence. The pictures showing the damaged fence with blocks were tendered and the two digital photographs were admitted as Exhibits "C" and "C1" while the certificate of Authentication was admitted as Exhibit "C2".

The Claimant alleged that the 2nd Defendant and his men further scattered the stone and the remaining tips of sand on the land and same have been washed off by current of floods that surge through the said land.

The Claimant tendered the receipts of purchase of the cement, sand and stones and other building materials he purchased to fence the land and the eight receipts were

admitted in evidence as Exhibits “D”, “D1”, “D2”, “D3”, “D4”, “D5”, “D6”, and “D7” respectively.

The Claimant alleged that the 2nd Defendant later informed the Claimant’s Site Manager that the land in question belonged to the Nigeria Immigration Service and that was the reason for the trespass and that he received instructions from the 1st and 3rd Defendants to carry out the various acts of trespass on the Claimant’s land.

The Claimant alleged that he reported the matter at the State CID, Edo State Police Command, GRA, Benin City and the 2nd and 3rd Defendants were arrested for offences of malicious damage to property and threat to life which and that they admitted the alleged offences. The Petition addressed to the Commissioner of Police of Edo State dated 28/9/17 was admitted in evidence as Exhibit “E”.

He alleged that after carrying out the alleged acts, the 2nd Defendant dropped a note with his manager (Mr. Patrick Omoudu) to deliver to the Claimant to call him or to meet him at the Nigerian Immigration Service, Edo State Command, Ikpoba Hill, Benin City.

The Claimant alleged that his Counsel (Umeanadu Kamuche) wrote a Demand Notice and a Pre-Action Notice to the 1st Defendant. The Pre-action Notice to the 1st Defendant dated 28/11/17 was admitted in evidence as Exhibit “F”.

The Claimant enumerated his Particulars of Special damages to be as follows:

1) 20 trips of sharp sand at N14,000 each ----------N 280,000.00;
2) 33 trips of sharp sand at N14,500 each ----------N 478,500.00;
3) 300 bags of cement at N2,700 each ----------N 810,000.00;
4) 20 bags of cement at N2,600 each ----------N 52,000.00;
5) 60 bags of cement at N2,600 each ----------N156,000.00;
6) 200 bags of cement at N2,700 each ----------N 540,000.00;
7) 30 tons of ½” Granite ----------N175,000.00;
8) 30 tons of ¾” Granite ----------N170,000.00;
9) Labour ----------N2,338,500.00

Grand Total = N5,000,000.00

At the hearing, the Claimant tendered eight receipts in proof of payments for items 1 to 8 above and they were admitted in evidence as Exhibits “D”, “D1”, “D2”, “D3”, “D4”, “D5”, “D6”, and “D7” respectively.

Under cross examination, the Claimant alleged that it was at the police station that he got to know that the same chief who sold to him also sold to the Nigerian Immigration. He said that the land he bought and the one the Immigration bought is separated by a road in between them. He said that the Defendants crossed the road to destroy his fence.

He said that subsequently, both the immigration and he reached a compromise that he should grant them a right of way to their land, and he released about 15feet and the Immigration also released part of their land in the compromise. He said that his complaint now is that he should be compensated for the damage to his fence.

In defence of this suit, the 2nd and the 3rd Defendants testified. From the evidence adduced, their case is that the 3rd Defendant is a member of the Nigeria Immigration Service Multi-Purpose Cooperative Society under which a land acquisition scheme was organized for interested members of the multi-purpose cooperative society to acquire plot of land.

The 3rd Defendant alleged that while serving as Immigration officer before her retirement, she only takes lawful instructions of the 1st Defendant that are strictly within the confines of the rules and regulations that guides her contract of employment as an Immigration officer and not on issues that bordered on her private affairs such as the acquisition of a building plot.

She alleged that she acquired her land from the Nigeria Immigration Service Multi-Purpose Cooperative Society.

She said that pursuant to a Land Acquisition Welfare Scheme, Edo State Command of the Nigeria Immigration Service Multi-Purpose Cooperative Society, by an application for building plot dated 2nd January 1977, originally acquired a large expanse of land measuring 1,120ft by 1,040ft, being, lying and situate at Ikhueniro village Area. At the hearing, a photocopy of an application for building plot was tendered and admitted as Exhibit “H”.

She alleged that she acquired a building plot measuring 100ft by 100ft labeled plot 81 from the Nigeria Immigration Service Multi-Purpose Cooperative Society Land Acquisition Welfare Scheme, Edo State Command as a member of the Scheme and after paying the sum of N160,000.00 (One Hundred & Sixty Thousand Naira) as consideration for the plot of land. At the hearing, she tendered a copy of the acquisition document dated 23rd day of June, 2008 issued to her by the Nigeria Immigration service multi-purpose cooperative society. The alleged receipt was admitted as Exhibit "1".

She alleged that after the acquisition of the expanse of land measuring (1,120ft by 1,040ft), the land was surveyed with survey plan No. DSS/ED/311/2008 dated 28/7/2008 by one Surveyor F.O. Ochuyebo (MNIS) Registered Surveyor. At the hearing the photocopy of the survey plan was admitted as Exhibit "J".

She further stated that the said parcel of land measures an area of 10.696 hectares, bounded by BEACONS NOS SC/EDF4581ZK, SC/EDF 4582ZK, SC/DF4583ZK and SC/EDF4584ZK, particularly shown and delineated on the said Exhibit "J", within which is her own plot of land measuring 100ft by 100ft.

She stated that after acquiring the (100) one hundred units of building plots, the Cooperative Society delineated the plots into (100ft by 100ft) per plot and the plot of land allocated to her is Plot Number 81 amongst the 100 units of plot of land on the plan shewing landed property of the Nigeria Immigration Service Land Acquisition Scheme, Edo State Command, Ohengie family and elders of Ikhueniro Village, Ikhueniro family land, Ikhueniro Village now Uhunmurode Local Government Area, Edo State. The photocopy of the plan showing all the plots was admitted as Exhibit "K" at the hearing.

She alleged that sometime in 2017, the 2nd Defendant who is her son and an officer of the Nigeria Immigration service multi-purpose cooperative society in Edo State command, called to inform her that a neighbor informed him of the act of trespass on her plot of land by some persons.

She said that consequently, she asked the 2nd Defendant to go to the site in company of another Immigration officer, to verify the veracity of the information.

She maintained that the 1st Defendant did not at any time give instruction to the 2nd Defendant to destroy the Claimant's property as alleged by the Claimant.

She alleged that the Claimant had maliciously trespassed on a portion of her plot of land and destroyed a unit of three blocks of 2-bedroom flats which she had erected to DPC level on her land, while he attempted to erect a fence across her plot of land beyond the established boundary.

At the trial she tendered some photographs to show the fence erected on the actual boundary by the Claimant after he allegedly destroyed her property which she erected to DPC level. The said photographer issued a certificate of compliance dated 15/11/2019 which was admitted as "Exhibit "L" and the Four photographs were admitted as Exhibits "L1" "L2" "L3" and "L4".

The 3rd Defendant alleged that the police inspection team from Anti- Cultism at the Police Headquarters Edo Sate Command came for on the spot of assessment with both parties and the then Ohen of Ikhueniro, now deceased. That after measurement of the land by the police in presence of all the parties involved, it was revealed that the Claimant's land which is on the right-hand side of the feeder road did not extend to the Nigeria Immigration service land which is on the left-hand side of the feeder road.

She said that the police advised the Claimant to erect his perimeter fence in line with the margin of the other existing fence on the right-hand side of the feeder road and he complied.

The 2nd and 3rd Defendants maintained that they did not trespass on the Claimant's land.

Upon the conclusion of the evidence, the learned counsel for both parties filed their final written addresses which they adopted as their final arguments at the hearing.

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

"Whether from the facts and evidence adduced in this case, the Claimant has successfully proved his case as required by law against the 2nd and 3rd Defendants as to be entitled to the grant of the reliefs sought before this Honourable Court".

Arguing the sole issue, learned counsel submitted that the burden of proof in civil matters such as this, is on the party who would fail if no evidence at all was given on either side. He said that the initial burden is on the party who alleged the affirmative in the pleadings while the evidential burden is on the adverse party to prove the negative. He relied on the cases of ***FASHANU V. ADEKOYA (1974) 6SC.83; ONOVO V. MBA (2014) 14NWLR PT 1427 PAGE 391 AT 414 PARA A-B PER OGUNBUYI JSC*** and ***AJARA V. AMU (1974) 10SC237*** and ***Sections 131 to 136 of the Evidence Act 2011***.

He said that in the instant case, the Claimant in his written statement on oath dated 27th day of March, 2019, deposed to the fact that the 2nd and 3rd Defendants trespassed upon his land, destroyed the perimeter fence and the blocks he moulded on the plot of land. However, under cross examination, the Claimant admitted clearly in his oral testimony that the 2nd and 3rd Defendants are not on his plot of land after he removed his perimeter fence from the road on the directive of the police team and the elders of the Community that came for an on the spot assessment/investigation.

He submitted that **"A claim for trespass is rooted in exclusive possession and all that a claimant needs to prove is that he has exclusive possession or that he has the right to such possession of land in dispute. But once the defendant claims to be the owner of the land in dispute, title is put in issue, and to succeed in his action, the plaintiff must establish by credible evidence that he has a better title than the defendant. And this he does by relying absolutely on the strength of his case and not on the weakness of the defence except where that weakness tends to strengthen or support the plaintiff's case".** He relied on the following decisions: ***OMOTAYO V. C.S.A (2010) 16NWLR (PT1218) P.1; OKORIE V. UDOM (1960) SCNLR. 326; AMAKOR V. OBIEFUNA (1974) 1 ALL NLR (PT.1) 119; JULES V AJANI (1980) 5-7 SC96; PIARO V TENALO (1976) 12 SC 31;*** and ***NGENE V. IGBO (2000) 4NWLR (PT 651) 131.***

He submitted that in a case for declaration of title, the Claimant must succeed on the strength of his case, and not on the weakness or even admission of his opponent and he cited the following cases: ***ONOVO V. MBA (2014) 14NWLR (PT. 1421) P. 391;***

See also MORUNWASE V. SORUNGBE (1988) 5NWLR (PT 92) 90; UMESIE V. ONUAGULUCHI (1995) 9NWLR (PT 421) 515; GANKON V UGOCHUKWU CHEMICAL IND. LTD (1993) 6NWLR (PT. 297) 55.

He submitted that from the totality of the evidence adduced by the Claimant and his witnesses, it is clear that the Claimant failed to prove on the preponderance of evidence that the 2nd and 3rd Defendants trespassed on his plot of land and maliciously destroyed his perimeter fence and blocks.

He further submitted that it was the 2nd and 3rd Defendants' who were able to prove by the evidence adduced that it was the Claimant who trespassed on a part or portion of the 3rd Defendant's plot of land when the he crossed the feeder road, moved into the expanse of land of the immigration service cooperative society and destroyed the 3 blocks of 2 flats each erected by the 3rd Defendant to DPC level on her plot of land.

He submitted that where both parties to a case have adduced evidence before a trial court, the trial court is duty bound to put the evidence adduced by both parties on a scale and weigh them to see which is heavier in quality or probative value before arriving at its final conclusion. He relied on the cases of ***UBN PLC V. LAWAL (2015) 14NWLR (PT 1474) PT 203*** and ***MOGAGI V ODOFIN (1978) LPELR 1890***.

He maintained that the Claimant in this suit was unable to show that he was the owner of the land he trespassed upon after he erected a perimeter fence on the left side of the feeder road, where there is the expanse of land acquired by the Nigeria Immigration Service Cooperative Society of which the 3rd Defendant's land is Plot No. 81.

He reiterated that to succeed in an action for trespass, a Claimant must show that he is the owner of the land or that he is in exclusive possession of it and he cited the case of ***AKOLEDOWO V. OJUBUTU (2012) 16 NWLR (PT 1325) P.1 CA.***

He posited that in this case; the Claimant brought an action for trespass against the 3rd Defendant who is the rightful owner and has been in exclusive possession of the plot of land the Claimant trespassed upon.

He said that from the facts of this case, the Claimant was the wrongdoer who trespassed on the 3rd Defendant's land and in the process maliciously destroyed the 3rd Defendant's property (3 blocks of 2 flats each built to DPC level).

He maintained that the Claimant failed to establish his claim on the strength of the evidence adduced by him and his witnesses at trial.

He submitted that a claim for damages would only arise if there is a breach of any legal duty to the Claimant by the Defendant and he relied on the following cases: ***AHMEDV. C.B.N (2013) 2NWLR (PT 1339) P.524*** and ***ACME BUILDERS LTD V. K.S.W.B (1992) 2NWLR (PT.590) 288.***

Learned counsel submitted that parties to a suit must be consistent in proving their case and he relied on the case of ***EZEMBA V. IBEMENE (2004) 14NWLR (PT 894) 617.*** He said that the Claimant, suddenly upon very strong cross examination abandoned the case of trespass against the Defendants and stated that he was only interested in the claim for damages.

He said that there were material contradictions in the evidence adduced by the Claimant in his attempt to prove his case and that it is settled law that where there are material contradictions in the evidence adduced by a party, the court is enjoined to reject the entire evidence as it cannot pick and choose which of the conflicting versions to believe or follow. He cited the following cases: ***ANYANWU V. PEOPLE DEMOCRATIC PARTY (2020) 3NWLR PT 1710, P. 134 AT 167 PARA A-B PER OKORO J.S.C; KAYILE V. YILBUK (2015) 7NWLR PART 1457, P.26 AT 27 PARA C; (2015) ALL FWLR PART 775 PAGE 347 AT 390 PARA B-F.***

Consequently, he urged the Court to reject the entire evidence adduced by the Claimant.

He said that in the amended joint statement of defence of the 2nd and 3rd Defendants, and the additional statement on oath of the 3rd Defendant, she stated in paragraph 15 that the police inspection team came for an on the spot assessment in the course of their investigation and after the measurement in the presence of all parties the team discovered that the Claimant's land was on the right hand side of the feeder road, while the immigration service cooperative society land was on the left hand side with the road in between both lands.

He said that the police team also observed that it was the Claimant who encroached/trespassed on the 3rd Defendant's land and based on this findings, the

police team ordered the Claimant to discontinue the act of trespass on the 3rd Defendant's land and adjust his perimeter fence in line with the margin maintained by his neighbors by shifting his fence backwards and away from the 3rd Defendant's land which he admitted under cross examination that he had done.

He said that this evidence of the 2nd and 3rd Defendants which were not controverted by the Claimant shows that the Claimant was the trespasser who also maliciously destroyed the property of the 3rd Defendant in the act of trespass. He submitted that he who comes to equity must have clean hands and he cited the case of ***AGBABIAKA V. FIRSTBANK OF NIGERIA PLC (2020)6NWLR PART 1719 PAGE 77 AT 100 PARA H.***

Counsel posited that in the instant case, the Claimant reported a case of malicious damage against the 2nd Defendant to the police which led to the arrest of the 2nd Defendant and another but failed to prove the said criminal allegation of malicious damage. He referred to ***section 135(1) of the Evidence Act, 2011*** which provides that where the commission of a crime by a party to any proceeding is directly in issue in any civil or criminal proceedings, it must be proved beyond reasonable doubt**.** He also cited the case of ***BUREAU OF PUBLIC ENTERPRISES V. DANGOTE CEMENT PLC (2020) 5NWLR PART 1717 PAGE 322 AT 351 PARA E.***

Furthermore, he submitted that the Claimant was unable to identify the dimension and location of the land he said the 2nd and 3rd Defendants trespassed upon.He submitted that it is trite law that a Claimant seeking declaration of title to land has a duty to show clearly the area of land to which his claim relates, its exact boundaries and its extent; as no court would be obliged to grant a declaration to an unidentified land. He relied on the cases of ***ASHIEK V BORNU GOVT (2012) 9NWLR (PT1304) P1CA; OGENDEGBE V. BALOGUN (2007) 9NWLR (PT 1039) 380; ADELUSOLA V. AKINDE (2004) 12NWLR (PT 887) 295; FAGUNWA V. ADIBI (2004) 7NWLR (PT 903, 944;*** and ***OKOCHI V ANIM KWOI (2003) 18NWLR (PT.851) 1.***

In conclusion, he urged the Court to dismiss the case of the Claimant with substantial costs.

In his final written address, the learned counsel for the Claimant, ***Kamuche Umeanadu Esq.*** formulated issues for determination as follows:

1) ***WHETHER THE CLAIMANT HAS PROVED THAT THE DEFENDANTS TRESPASSED ON HIS LAND MEASURING AN AREA OF 9159.993 SQUARE METRES PARTICULARLY SHOWN/ DELINEATED ON SURVEY PLAN NO: GEO/638:2017 SITUATE AT IKHUENIRO, BENIN CITY TO BE ENTITLED TO ALL HIS RELIEFS SOUGHT?***
2) ***WHETHER THE UNWHOLESOME ACT OF THE 2ND DEFENDANT ENTERING THE CLAIMANT'S LAND WITH HIS CONFEDERATES ALL ACTING ON THE INSTRUCTIONS OF THE 1ST AND 3RD DEFENDANTS TO DEMOLISH THE CLAIMANT'S PERIPHERAL FENCE AND ACTUAL DEMOLISHING OF 10,000 BLOCKS ON THE CLIAMANT'S LAND DOES NOT AMOUNT TO "SELF-HELP" THEREBY LIABLE TO HIM IN SPECIAL DAMAGES?***

Thereafter, the learned counsel argued the two issues seriatim.

ISSUE ONE:

WHETHER THE CLAIMANT HAS PROVED THAT THE DEFENDANTS TRESPASSED ON HIS LAND MEASURING AN AREA OF 9159.993 SQUARE METRES PARTICULARLY SHOWN/ DELINEATED ON SURVEY PLAN NO: GEO/638:2017 SITUATE AT IKHUENIRO, BENIN CITY TO BE ENTITLED TO ALL HIS RELIEFS SOUGHT?

Arguing issue one, the learned counsel submitted that a claim of trespass to land is rooted in exclusive possession and the onus of proof lies squarely on the Claimant to prove by credible evidence that he has exclusive possession, or he has the right to such possession of the land in dispute and he cited the cases of ***AMAYO V. ERINMWINGBOVO (2006) LPELR – 458 (SC)***; ***THOMPSON V. AROWOLO (2003) LPELR 3240(SC)***; and ***ODUNZE & ORS V. NWOSU & ORS (2007) LPELR 2252 (SC)***.

The learned counsel rehashed the evidence of the Claimant and posited that the Claimant asserted that he has constantly and consistently improved on the land before the Defendants entered the said land to commit various acts of trespass on same.

He said that the evidence of the Claimant was not contradicted or controverted by a way of cross-examination and he urged the Court to accept and act on all the impeccable evidence adduced by the Claimant. He relied on the case of ***ADUDA V. PEPPLE (2024) LPELR – 61886 (CA)*** where the Court of Appeal that: "***where the adversary fails to cross-examine a witness upon a particular matter, the implication is that he accepts the truth of that matter as led in evidence."*** He also relied on the case of ***TYONEX NIG. LTD. & ANOR V. PFIZER, RESORT DEVELOPERS LTD. V. OLUWANIYI & ANOR (2021).***

He said that neither the Defendants did not put any other evidence on the Courts imaginary scale to balance the evidence of the Claimant in the witness box. He said that even if there was any, same was expunged following the orders of the Court on 29/03/23 and the effect of the Court expunging material evidence elicited during cross-examination from the record of the court fortifies the Claimant's evidence-in-chief and renders that of the Defendants (if at all) devoid of any evidential value. He cited the following cases: ***BELLO & ANOR V. LAWAL & ORS. (2023) LPELR – 61165 (CA), KWENEV V. STATE (2022) LPELR 57561 (SC) P37 PARAS A – B. ODEY & ORS V. THE REGISTERED TRUSTEES OF LUTHERAN CHURCH OF NIG. (2015) LPELR 52120 CA, BEYER EGBA V. STATE (2021) 56745 (CA) FEMENE & ORS V. FRN & ANOR (2024) LPELR (CA) ONYADI DEVELOPMENT (NIG) LTD. V. KUTA & ORS (2021) LPELR 55867 (CA) FBN LTD. V. OTOKWULA (2023) LPELR 60791 (CA)*** and ***OMOTOSHO & ORS. V. OJO (2007) LPELR 8809 (CA) P.18, PARAS 2 – 6.***

Learned counsel submitted that Defendant's counsel's submission that: "***under cross-examination the Claimant stated and admitted clearly in his oral testimony that the 2nd & 3rd Defendants are not on his plot of land after he the Claimant removed his perimeter fence from the road on the directive of the police team and the elders of the community that came for on the spot assessment/ investigation"*** is not supported by the evidence on record. He submitted that it is trite law that the address of counsel and oral statements made by counsel in court do not amount and cannot be substituted for cogent evidence in proof of a fact in issue. He relied on the cases of ***OROGBEMI V. STAANGADI V. PDP & ORS (2018) LPELR 44375 (SC)*** and ***ATAMAH V. EBOSELE (2010) ALLFWLR (PT. 1925) AT 19394.***

He therefore urged the Court to discountenance all the submissions of the 2nd – 3rd Defendants' counsel in that regard.

Furthermore, learned counsel referred to Exhibits "L1" to "L 4", which were made while the matter was in Court and he relied on the following cases: ***ANAGBADO V. FARUK (2016) LPELR 41634 (CA), GOVT OF KANO STATE & ORS. V. JA'AFAR & ORS (2021) LPELR – 55176 (CA) P. 19, PARAS C – D. GARBA & ANOR V. BANNA (2014) LPELR 24308 (CA), KASSIM V. EBERT (1966) LPELR 25285 (SC) P. 4 PARAS A – B. NIGERIA ENGINEERING WORKS LTD. V. NCS BOARD & ORS (2023) LPELR 60620 (CA) PP 28 – 29, PARAS C – A.***

He submitted that the evidence led on the particulars of the alleged title documents of the 3rd Defendant is so incredible that no Court/ Tribunal can safely believe same.

He referred to the answers of the 3rd Defendant on the 18/03/2025 under cross-examination when she stated as follows:

"yes the application was granted in 1977".

"I got the land 31 years after the date of its acquisition"

"I was not a staff then (in 1977) but was issued afterwards".

He urged the Court to take judicial notice of when Edo State was created and he relied on ***section 122 of the Evidence Act (as amended in 2023)***. He urged the Court to hold that in 1977 when the 3rd Defendant alleged her predecessor applied for the said land there was no Edo state; and that the "Nigerian Immigration Service Multipurpose Cooperative Society Land Acquisition Scheme Edo State command could not have applied and acquired land in Edo State before the emergence of Edo State and therefore renders all the line of evidence proffered in that regards as incredible and tissues of lies targeted at misleading/ hood winking this Court which the Law forbids.

Learned counsel submitted that the 2nd and 3rd Defendants did not lead cogent and compelling evidence to prove that the 3rd Defendant is the owner of the alleged plot No. 81 and he referred to the case of ***FBN PLC. V. YEGWA & ORS (2022) LPELR – 59630 (SC)*** where the Apex Court held that ***"it is an elementary principle of law that he who asserts must prove".***

He submitted that the failure of the 2nd and 3rd Defendants to prove the origin of their title and who gave them the impetus to enter the Claimant's land on the 26/09/17 is fatal to their case and he relied on the following cases: ***SHARING CROSS EDUCATIONAL SERVICE LTD. V. UMARU ADAMU ENTERPRISES LTD. & ORS (2020) LPELR – 49567 (SC) 2020 SC, NUP V. INEC (2021) LPELR – 58407 (SC) 2021 (SC). AG FEDERATION V. AG OF ABIA STATE & ORS. (2024) LPELR – 62576 (SC) 2024.***

He urged the Court to hold that a case of trespass has been made out against the Defendants and resolve issue 1 in favor of the Claimant.

ISSUE TWO:

WHETHER THE UNWHOLESOME ACT OF THE 2ND DEFENDANT ENTERING THE CLAIMANT'S LAND WITH HIS CONFEDERATES ALL ACTING ON THE INSTRUCTIONS OF THE 1ST AND 3RD DEFENDANTS TO DEMOLISH THE CLAIMANT'S PERIPHERAL FENCE AND ACTUAL DEMOLISHING OF 10,000 BLOCKS ON THE CLIAMANT'S LAND DOES NOT AMOUNT TO "SELF-HELP" THEREBY LIABLE TO HIM IN SPECIAL DAMAGES?

Arguing this second issue, the learned counsel adopted all his submissions in respect of Issue 1 and contended that the Claimant is entitled to the grant of all his relief as per special damages before this Court.

He submitted that where ever a party (such like the claimant herein) has suffered specific losses on account of trespass, he is entitled to special damages as a direct and immediate result of trespass and he relied on the cases of ***OKAFOR V. SAAKURA & ANOR (2018) LPELR – 44138 CA*** and ***ELIOCHIN (NIG) LTD & ORS. V. MBADIWE (1986) LPELR 1119 (SC).***

He said that all through the gamut of the evidence of the Claimant in proof of the losses/ damages he sustained based on the activities of the Defendants/ their agents they failed to cross examine him on this very fundamental but crucial aspect of the proceedings before this Honourable Court.

He referred to the decision of the Court of Appeal has in the case of ***MORKA & ORS V. OSADEME (2022) LPELR – 58131(CA)*** where they held that: ***"Unchallenged evidence, without more, can constitute sufficient proof of special damage but a claimant who has the advantage of being able to base his claim upon a precise calculation must give the defendant access to the facts which make such calculation possible".***

He also cited the cases of: ***ENEH V. OZOR & ANOR (2016) LPELR 40830 (SC) AT 14 -16 (E – A) (2016) 16 NWLR (PT 1538) 219*** and ***AJIGBOTOSHO V. RCC (2018) LPELR – 44774 (SC) AT 29 – 30 (D – E).***

He maintained that the omission of the Defendants to cross-examine the Claimant on the evidence led on the special damages is very fatal to their defence and renders same credible and acceptable so much so that the court can believe and act on same see the cases.

He submitted that there is no contradiction in the evidence of the Claimant's case more so when the entire line of evidence during cross-examination had all been expunged by this court following its extant orders made on 29/03/2023.

Furthermore, learned counsel submitted that the Claimant's case is for civil trespass and not for malicious damage. He said that the submission on the burden to prove allegation of crime beyond reasonable doubt is misconceived.

Finally, he urged the Court to resolve issue 2 in favour of the Claimant.

Upon receipt of the Claimant's final written address, the learned counsel for the 2nd and 3rd Defendants filed a Reply on Points of Law.

Upon a careful examination of the Reply on Points of Law, I observed that the submissions are on the evidence adduced and not on points of law. Mainly, in the said Reply, he pointed out that the evidence elicited from the Claimant under cross-examination was never expunged from the records as alleged by the Claimant's counsel.

He contended that such an Order of Court as alleged by the Counsel to the Claimant would amount to an infringement on the right of the 2nd and 3rd Defendants to cross

examination. He said that the law is settled that a party has a right to cross-examination and he relied on the cases of ***IYONEX (NIG)LTD V. P FIZER LTD (2020)1 NWLR PART 1704 PAGE 125 AT 166 PARA B-C; DINGYADI V. INEC (NO.1) (2010)18NWLR (PT 1224)1*** and ***BODE THOMAS V. FEDERAL JUDICIAL SERVICE COMMISSION, LER (2018)SC; 228/2013.***

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

As I have already observed, the 1st Defendants did not put up any defence to this suit. However, in their evidence, the 2nd and 3rd Defendants who were members of staff under the 1st Defendant led evidence to dissociate the 1st Defendant from the alleged acts of trespass. In her testimony, the 3rd Defendant stated that while serving as an Immigration officer before her retirement, she only took lawful instructions of the 1st Defendant that were strictly within the confines of the rules and regulations that guides her contract of employment as an Immigration officer and not on issues that bordered on her private affairs such as the acquisition of a building plot.

From the totality of the evidence adduced at the hearing, the fulcrum of the claim is on trespass to land. I am of the view that the sole Issue for Determination in this suit is: ***whether the Claimant is entitled to the reliefs claimed in this suit.***

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:

1) ***By traditional evidence;***
2) ***By the production of documents of title;***
3) ***By proving acts of ownership;***
4) ***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***

5) ***By acts of long possession and enjoyment of the land.***

See the case of ***Idundun vs. Okumagba (1976) 9-10 S.C. 227***.

The point must be made that any one of these 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 his evidence the Claimant appears to be relying on the second and third means of proof, namely: proof by production of documents of title and proof by acts of ownership.

On the proof by documents of title, the Claimant alleged that he acquired the said land measuring 200ft X 500ft (Two Hundred Feet by Five Hundred Feet) from one Chief Godwin Osagie Idehen(deceased) the then Ohen-Igie of Ikhueniro Community for the sum of N3, 000,000.00 (Three Million Naira). He tendered a Deed of Transfer made on the 13th of February 2012 which was admitted in evidence as Exhibit "B".

The Claimant also alleged that the said parcel of land measures an area of 9159.993 Square Metres, and is bounded by Beacon Nos: SC/EDR2570ZG, SC/EDR2571ZG, SC/EDR2572ZG and SC/EDR2573ZG respectively, particularly shown/delineated on Survey Plan No. GEO:638:2017: ENG-EDO. At the trial, he tendered the survey plan as Exhibit "G".

The Claimant also alleged that his Predecessor-In-Title got a community grant of the land measuring 200ft X 500ft (Two Hundred Feet by Five Hundred Feet) vide Ikueniro Community Approval dated 05/04/1977. The original copy of the said approval given to the Claimant's Predecessor in Title was admitted as Exhibit "A".

In defence to this suit, the 3rd Defendant led evidence to show that she also acquired a parcel of land in the same area, measuring 100ft by 100ft labeled as plot 81 from the Nigeria Immigration Service Multi-Purpose Cooperative Society Land Acquisition Welfare Scheme, Edo State Command as a member of the Scheme after paying the sum of N160,000.00 (One Hundred & Sixty Thousand Naira) as consideration for the plot of land. At the hearing, she tendered a copy of the acquisition document dated

23rd day of June, 2008 issued to her by the Nigeria Immigration service multi-purpose cooperative society. The alleged receipt was admitted as Exhibit "1".

She alleged that after the acquisition of the expanse of land measuring (1,120ft by 1,040ft), the land was surveyed with survey plan No. DSS/ED/311/2008 dated 28/7/2008 by one Surveyor F.O. Ochuyebo (MNIS) Registered Surveyor. At the hearing the photocopy of the survey plan was admitted as Exhibit "J".

She further stated that the said parcel of land measures an area of 10.696 hectares, bounded by BEACONS NOS SC/EDF4581ZK, SC/EDF 4582ZK, SC/DF4583ZK and SC/EDF4584ZK, particularly shown and delineated on the said Exhibit "J", within which is her own plot of land measuring 100ft by 100ft.

She stated that after acquiring the (100) one hundred units of building plots, the Cooperative Society delineated the plots into (100ft by 100ft) per plot and the plot of land allocated to her is Plot Number 81 amongst the 100 units of plot of land on the plan shewing landed property of the Nigeria Immigration Service Land Acquisition Scheme, Edo State Command, Ohengie family and elders of Ikhueniro Village, Ikhueniro family land, Ikhueniro Village now Uhunmuwode Local Government Area, Edo State. The photocopy of the plan showing all the plots was admitted as Exhibit "K" at the hearing.

In this suit, from the evidence adduced by the Claimant and the Defendants, it is clear that the Claimant and the 3rd Defendant traced their root of title to the same source, to wit: the Ohengie and Elders of Ikhueniro Village in Uhunmuwode Local Government Area of Edo State.

The major dispute in this suit is on the exact location and the boundaries of the land of the Claimant and that of the 3rd Defendant. From the evidence adduced by both parties, it is clear that upon the escalation of the dispute between the parties, both parties resorted to some extra judicial measures through the police, thugs and the personnel of the Nigeria Immigration Service.

The evidence of the Claimant is that on 26/09/2017 while his manager and masons were on the site working, the 2nd Defendant appeared on the site with some other fierce looking men wearing Immigration Camouflage uniforms and used a

sledgehammer to destroy the Claimant's fence. The pictures showing the damaged fence with blocks were tendered and the two digital photographs were admitted as Exhibits "C" and "C1" while the certificate of Authentication was admitted as Exhibit "C2".

In his address, the learned counsel for the Claimant consistently maintained that on the 29th of March, 2023, the entire evidence of the Claimant during cross-examination was expunged by the an order of Court made on that date. I have meticulously checked the record of proceedings, and I can confirm that on the said date, I merely foreclosed the Defendants from further cross-examination of the Claimant because of the failure of their counsel to attend the Court on that day to continue with his cross-examination. I did not expunge the previous evidence elicited under the cross-examination of the Claimant before that date. Of course, there was no basis for expunging the previous evidence.

On their part, the 2nd and 3rd Defendants alleged that the Claimant had maliciously trespassed on a portion of the 3rd Defendant's plot of land and destroyed a unit of three blocks of 2-bedroom flats which she had erected to DPC level on her land, while he attempted to erect a fence across her plot of land beyond the established boundary.

At the trial she tendered some photographs to show the fence erected on the actual boundary by the Claimant after he allegedly destroyed her property which she erected to DPC level. The Four photographs were admitted as Exhibits "L1" "L2" "L3" and "L4".

From the evidence adduced by both parties, I am convinced that there was mutual destruction of the properties of both parties arising from the dispute on the actual boundary between the Claimant's land and that of the 3rd Defendant. The dispute is not about their respective title documents. As I earlier stated, both parties traced their root of title to the same source. Thus, it will be unnecessary for me to begin to interrogate their title documents to ascertain their authenticity.

In proof of their respective cases, both parties tendered survey plans to identify their separate parcels of land. There is Exhibit 'G' tendered by the Claimant and the 3rd Defendant tendered Exhibits "J" and "K". The purpose of tendering a survey plan is to show with reasonable certainty the identity and extent of the land claimed: reflecting

all the features of the land and showing clearly the boundaries. See the case of ***Owie v Ighiwi (2005) 3 MJSC 82;*** and ***Oyefeso v Coker (1999) 1 NWLR (PT 588) 654.***

The point must be made that the purpose of the Defendant filing a counter survey plan is to indicate that the Claimant's plan does not accurately represent the correct position of the location and the extent of the land in dispute or that the land in dispute is wrongly delineated.

It is settled law that a trial Court has the power to compare the disputed survey plans tendered by the parties before him in order to make a proper evaluation of the evidence placed before him. See the cases of ***Manus Ukaegbu & Ors V. Mark Nwololo (2009) 1 N.S.C.R. 21; Nwokorobia V. Nwogu (2009) 5 SCNJ 218 at 245; Onwujuba V. Obienu (1991) 4 NWLR (Pt.183) 16 and OHAEGBU & ORS V. REGD TRUSTEES OF CAPUCHIN FRIARS MINOR NIG (2015) LPELR-25878(CCA) (P. 18-19 PARAS. F)***

Upon a physical comparison of the survey plans tendered by both parties, I observed that none of the survey plans addressed the salient issue of the actual boundary between the Claimant's land and that of the 3rd Defendant. In a situation where there are two or more plans filed by the two parties and the plans are unable to address the real issue at stake, there is the need or requirement to file a composite plan as the boundary of the lands in dispute can only be determined by comparison of the plans with a composite plan of the area.

A Composite Plan is a plan which shows clearly the dimensions of the land, the boundaries and other salient features pertaining to the land the subject of dispute before a Court. It is usually filed when more than one survey plan is tendered in evidence before the Court. In such a case, it would become necessary for the Court to rely on an independent Plan to resolve the real issue in controversy between parties. See the cases of ***BITAS VS. SULEIMAN (1973) ALL N.L.R. (PT. 11) 282; BANKOLE VS. PELU (1991) 8 NWLR (PT. 277) 523; NNADI VS. OKORO (1998) 1 NWLR (PT. 535) 573 and AJIBOYE VS. ONIGBINDE (2014) LPELR- 23117.*** I have had a careful look at the Survey Plans tendered by the parties in this suit. There is no indication thereon of the area of land allegedly trespassed upon by the Defendants. It is apparent from the totality of evidence before me that the area of land allegedly trespassed upon was not proved.

In an action for declaration of title and trespass to part of land, the onus is on the Claimant to prove the exact portion of land trespassed upon, since his case is not that the Defendants trespassed on the entire land claimed. Curiously, under cross examination, the Claimant admitted that the Immigration and himself have reached a compromise that he should grant them a right of way to their land. He said that he released about 15 feet and the Immigration also released part of their land in the compromise. He said that his complaint now is that he should be compensated for the damage to his fence. It is apparent that the alleged compromise of ceding part of his land in compromise has further altered the dimensions of the Claimant's land. All these developments are not reflected in any of the survey plans tendered at the hearing. Clearly, with this compromise, the Claimant is not entitled to the original size of the land captured in his survey plan. The present size is therefore left to conjectures and speculations. The Claimant's claim cannot be established based on speculations.

The identity of the disputed land was not in doubt. There is however the need to prove the portion trespassed upon before the Claimant can be entitled to damages. I hold that from the state of the pleadings and the evidence, the failure to file a composite plan is fatal to the Claimant's case. See the case of ***ADESINA V. ONUNGWA & ORS (2019) LPELR-49147(CA) (PP. 24-27 PARAS. F).***

In a land dispute, the burden is on the Claimant to establish the exact identity of the area in dispute and the portion trespassed upon by the Defendants. See ***Sections 131-134 and 135 of the Evidence Act 2011*** and the case of ***Nnadi V. Okoro (1998) 1 NWLR (Pt.535) 573.*** I hold that the Claimant has not established the identity of the portion of his land allegedly trespassed upon by the Defendants.

From the foregoing, I hold that the Claimant is not entitled to the reliefs sought in this suit. The sole issue for determination is therefore resolved against the Claimant.

Sequel to the foregoing, this suit is dismissed with N200,000.00 (Two Hundred Thousand Naira) costs in favour of the 2nd and 3rd Defendants.

P.A. AKHIHIERO
JUDGE
11/05/2026

<u>COUNSEL:</u>

Kamuche Umeanadu Esq----------Claimant

Unrepresented---------- 1st Defendant

O.I. Asenoguan Esq---------- 2nd & 3rd Defendants