

**IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION, HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE E. F. IKPONMWEN –
CHIEF JUDGE**

THURSDAY, 30TH NOVEMBER, 2017

SUIT NO. B/311/12

BETWEEN:

MR. JACOB OKOAWO JP í í í í í . í . CLAIMANT

And

- | | | |
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| 1. MR. EWEANSIHA OWIE-ADOLOR
2. MR. GOODLUCK OSAYANDE
3. MR. VICTOR IDUBOR
4. MR. WILFRED AYAMEKHUE
5. MR. FELIX OGBARETIN
6. MR. OSASIMWIN EMUMWEN
7. PERSONS UNKNOWN | } | í DEFENDANTS |
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JUDGMENT

The claimant instituted this action vide a Writ of Summons filed on 21st of May 2012. By paragraph 31 of the 2nd Further Amended Statement of claim filed on 30th of March 2017 the claimant claims against the defendants jointly and severally as follows:

- (a) A declaration that the claimant is the lawful owner and the legal title holder of all that piece or parcel of land measuring 200 feet by

200 feet (two hundred feet by two hundred feet) described in Survey Plan No. SIE/EDO 9/068. Beacon Nos. F9181M, F9182M, F9183M and F9184M dated 27th February 2009 and situate at Aruogba Village, Oredo Local Government Area, Edo State and therefore entitled to the grant of statutory right of occupancy in and over the said parcel of land.

- (b) A declaration that the claimant is the lawful owner and the legal title holder of all that piece or parcel of land measuring 200 feet by 400 feet (two hundred feet by four hundred feet) described in Survey Plan No. SIE/EDO9/035, Beacon Nos. C8850M, C8851M, C8852M and C8853M dated 9th February, 2009 and situate at Aruogba Village, Oredo Local Government Area, Edo State and therefore entitled to the grant of statutory right of occupancy in and over the said parcel of land.
- (c) Perpetual Injunction restraining the defendants, their agents, servants, workmen and privies from committing any further acts of trespass onto the said piece or parcel of land measuring 200 feet by 200 feet (two hundred feet by two hundred feet) described in Survey Plan No. SIE/EDO9/068, Beacon Nos. F9181M, F9182M, F9183M and F9184M dated 27th February, 2009 and situate at

Aruogba Village, Oredo Local Government Area, Edo State, which said land are well known to all parties in this suit including the defendants or selling, pledging, transferring or alienating same whatsoever or doing anything inconsistent with the claimant's rights, powers and privileges in and over the said communal lands.

- (d) Perpetual Injunction restraining defendants, their agents, servants, workmen and privies from committing any further acts of trespass onto the said piece of land measuring 200 feet by 400 feet (two hundred feet by four hundred feet) described in Survey Plan No. SIE/EDO9/035, Beacon Nos. C8850M, C8851M, C8852M and C8853M dated 9th February, 2009 and the said land are well known to all parties in this suit including the defendants or selling, pledging, transferring or alienating same whatsoever or doing anything inconsistent with the claimant's rights, powers and privileges in and over the said communal lands.
- (e) The sum of ₦10,000,000.00 (ten million naira) being the estimated financial value for the economic crops destroyed by the defendants.

By paragraph 48 of the Joint Statement of Defence and Counter-claim filed on 8th day of November, 2013, the defendants counter claims against the claimant as follows:

- (a) A declaration that the defendants and indeed Aruogba Community are the customary owners in possession from time immemorial of the parcels of land in dispute measuring 200 feet by 200 feet by 400 feet respectively adjoining each other and located at Aruogba Community, Oredo Local Government Area of Edo State, earmarked for the building of Aruogba Community Health Centre since 2002 which land is known to all the parties conversant upon that the defendants are the persons entitled to a statutory right of occupancy over the said land.
- (b) A perpetual Injunction restraining the claimants, his agents, his assigns, his privies, servant or anybody claiming title under him from trespassing into the defendants land, subject matter of this suit.

The issue arising in this case was formulated on 22/5/2017 to wit:

Whether the claimant is entitled to the various reliefs sought in this case?

The claimant opened his case on 22/5/2017 with CW1 Usinefo Omoregie testifying. He adopted his statement on oath filed on 16/5/2013. He stated that he is the pointer for Aruogba Community in respect of land matters. When the claimant applied to Aruogba Community for the parcels of land in dispute he (CW1) was mandated by the executive of Aruogba Community Association to inspect and show the land that it is free from all encumbrances to the claimant, which he did. Thereafter the community through the Development Association approved the land for the claimant. The claimant paid the sum of ₦400,000.00 (four hundred thousand naira) and ₦800,000.00 (eight hundred thousand naira) to the community in consideration of the transfer of the said pieces or parcels of land to the claimant. The claimant's Solicitor prepared a Deed of transfer which was executed by the claimant and Aruogba Development Association on behalf of the entire Aruogba Community. He is aware that the claimant commissioned a surveyor to survey the pieces or parcels of land.

Under cross examination by Nwoha Esq. CW1 testified that he knows the land in dispute. It is not true that when the elders were carrying out verification the claimant failed to produce his documents.

CW2 Osazee Iyagbe testified on 22/5/2017 by adopting his statement on oath filed on 16/5/2013. He stated that he is the Secretary of Aruogba

Community and sometime in 2008, the claimant vide letters dated 15-11-2008 and 15-4-2008 applied for the parcels of land in dispute. The applications were processed and approved by the community. The Aruogba Community in consideration of the sum of ₦400,000.00 (four hundred thousand naira) and ₦800,000.00 (eight hundred thousand naira) for the two parcels of land transferred same to the claimant. The claimant's Solicitor prepared a Deed of transfer between the community and the claimant which was duly executed by both parties. He is aware that the claimant commissioned a registered surveyor to survey the land. The claimant took possession of the land and planted cassava, plantain and economic crops on the land. Sometimes in April, 2012 the defendants trespassed upon the parcels of land of the claimant and in the process destroyed the economic crops planted by the claimant.

Under cross examination by Nwoha Esq. CW2 stated that he knows the land in dispute. The community issued the documents to the land to the claimant. By virtue of his position as Secretary to the community he is a member of the elders' council.

Claimant Jacob Okoawo testified on 22/5/2017 by adopting his statement on oath filed on 1/2/2017. He stated that by a letter with reference No. FR625T6/134 dated 12th April, 2000, the Edo State Ministry of

Agriculture and Natural Resources conveyed the then Governor's Approval for the de-reservation of 142.7 hectares of land in Ogba Forest Reserve Area BC/24/1. By an application dated 15th of January, 2008 he applied and obtained approval for a piece or parcel of land measuring 200 feet by 400 feet (two hundred feet by four hundred feet) later by a letter dated 15th of April, 2008 he again applied and obtained approval for another piece or parcel of land measuring 200 feet by 200 feet (two hundred feet by two hundred feet) which pieces or parcels of land he acquired after fulfilling all the customary and other requirements demanded by the Building Plot Allotment Committee of Aruogba Village. After the approval he commissioned Stanley Egogo, a Registered Surveyor to survey the two pieces or parcels of land. The Deed of Transfer was later prepared by his lawyer in respect of the said pieces or parcels of land. After he acquired possession of the parcels of land he proceeded to plant Plantain, cassava, watermelon, yams and maize on the parcels of land. He has been in lawful possession of the land from 2008 till date without any person(s) questioning his right to the land and without any let or hindrance from anybody. In the exercise of his ownership right and possession in and over the said land he transferred 50ft by 100ft (fifty feet by one hundred feet) to one Mr. Solomon Iyase of No. 7, School Road, Edo State, Benin City, he also transferred 50

feet by 100 feet (fifty feet by one hundred feet) to one Mr. Solomon Esezobor of No. 14, Ukpenu Road, Ekpoma and 100ft by 100ft (one hundred feet by one hundred feet) to one Dr. Ehiga Enabudoso of No. 1, Osakwe Street Off Ekenwan Road, Benin City.

Consequent upon the various acts of trespass upon the said parcels of land by the defendants and their agents, the aforementioned persons he transferred the aforesaid portions of land to from his parcels of land now in dispute have since demanded for and received the considerations they paid for their respective parcels of land since he could not deliver unencumbered title and possession to them and the title to the land has reverted back to him. Sometime ago, his brother Mr. Solomon Iyase informed him that he met the defendants with a woman on the land and on his enquiry of what they were doing on the land, he was informed by the woman that the defendants approached her and her husband to buy the piece or parcels of the said land. As soon as he got the information he called the defendants to inform them to refrain from trespassing on his land. When he came back to Benin, he immediately went to Aruogba Community to report the matter to the 1st and 2nd defendants. The 1st and 2nd defendants called the 3rd ó 6th defendants to the house of the 1st defendant where they informed them that he duly acquired the land and the various crops he has on the land. The 1st and 2nd

defendants informed him that they are going to relocate him to another place outside his original land, because they have taken a decision to transfer his land to another. As at the time he acquired the parcels of land the 1st and 2nd defendants were not odionwere but were however aware of the said acquisition. The defendants in this suit are in the habit of dispossessing legitimate land owners of Aruogba Community of their land under the guise of earmarking such land for the building of a Community Health Center. For example, the case of Mr. Okundaye Evbaguehita Jude (suing by his caretaker Erhiagbonye Lucky) and Eweansiha Owie-Adolor & Ors. B/847/2011. The land in dispute which the defendants allegedly earmarked for Community Health Centre is distinct from the land in suit No. B/871/11 where the defendants also stated that the land is also earmarked for Community Health Centre. His land has never been earmarked for any Health Centre or any public utility or at all. He stated that Mr. Omoregie Gerald was the Ohen (traditional and Spiritual Head) of Aruogba Community and that he (Mr. Omoregie Gerald) has relinquished his functions as the Ohen of Aruogba Community to his uncle Mr. Clifford Omoregie who is now the present Ohen of the said community as a result of his conversion to the Christian religion. Mr. Omoregie Gerald in exercise of his power as the then Ohen of Aruogba Community and the elders of the

said community appointed Osazee Iyangbe and others as members of the Community Development Association to administer landed property and other allied functions for and on behalf of the said community. Osazee Iyangbe was appointed as the Secretary of the community in 2007 upon the removal of Rev. Dickson Ogbahon as the Community Secretary. That in order to avoid endless tenure for those appointed, it was agreed in 2008 that there should be a four year tenure of office as regards the appointment. Consequent upon such agreement Osazee Iyangbe and others were formally appointed as the representatives of Aruogba Community Development Association on the 16th day of November, 2008. Osazee Iyangbe was appointed as the Secretary of Aruogba Community Development Association on the same day. On his refusal to allow the 1st and 2nd defendants to relocate his land and transfer same, the 1st and 2nd defendants instructed 3rd ó 6th defendants to destroy the crops on the said land and are set to alter the character of said land irreparably. That monetary damage will not be able to compensate for the irreparable damages that he will suffer. The claimant tendered exhibits A, B, B1, C, C1, D, D1, E and E1.

Under cross examination by Nwoha Esq. the claimant testified that exhibits A, B, B1, C and C1 were acquired in 2011. He showed the documents to the elders in 2011. He did not conceal the documents from the

elders. They told him they were transferring him to another land. When he queried them this dispute arose.

At the close of the claimant's case, the defendants opened their case 21/6/17 with DW1 Raphael Aiyamenkhue testifying. He adopted his statement on oath filed 20/6/2017 wherein he stated that he is a native of Aruogba Community. The Aruogba community had reserved some land for the Community Health Centre but some years ago there was rumour that people were encroaching onto the community land. The elders and infact the whole community decided to carry out verification of their land, though they were aware the claimant acquired some parcels of land in the community, he failed to come for verification. When the claimant failed to come for verification, the community took it that he has encroached into the community land. The decision of the community was not limited to the claimant but it also affected other people that did not come for verification including those living overseas. Under cross examination by Isuku Esq. DW1 agreed that he is not a member of the verification committee set up by the Aruogba Community. He knew that the claimant took his documents of title to the committee but he was not present. He knows the land in dispute. He cannot remember the dimension of the land in dispute.

At the close of evidence both learned counsel adopted their respective written addresses on 10/10/2017. Chief O. T. Nwoha of counsel to the defendants in his written address filed on 28/6/2017 submitted that from the totality of the evidence and exhibits before the court, the claimant has failed to prove the identity of the land in dispute with certainty as required by law as to entitle him to judgment relying on the case of **Ayanwale v Odusami** (2012) vol. 204 LRCN page 198 at 208. He submitted that there are inconsistencies and contradictions in the case of the claimant and the court cannot pick and choose which one to believe and which to disbelieve relying on the case of **DOMA v INEC** (2014) 12 WRN page 47. According to him the claimant failed to prove his case. See **Ukaegbu v Nwololo** (2009) LRCN vol. 169 page 210. He submitted that the defendants filed a counter claim in this suit, the counter claimant led credible evidence of incidents, events and transaction that led to the acquisition of the land. See the case of **Ukaegbu v Nwololo** (2009) LRCN vol. 169 page 210.

In conclusion, Chief Nwoha urged the court to dismiss the claimant's claim and grant the defendant's counter claim.

R. O. Okpebho Esq. of counsel to the claimant in his written address filed on 10/7/2017 raised two issues for determination viz:

- (a) Whether the claimant is entitled to the various reliefs sought in this case?
- (b) Whether the 1st ó 6th defendants/counter claimantø have established a better title to the land in dispute to entitle them to judgment on their counter claim?

Learned counsel submitted on issue 1 that from the oral and documentary evidence (exhibits A ó E1) adduced in this case by the claimant and his witnesses the claimant has established his case on the preponderance of evidence to entitle him to the various reliefs sought in this case relying on **Boothia Maritime Inc. & Ors v Fareast Mercantile Co. Ltd** (2001) NWLR (pt. 719) page 572 at 589. The claimant was not cross examined on those documents and so they stand unchallenged. See **J.W.E. Metibaye v Narelli International** (2009) 16 NWLR (part 116) page 326 at 354. He submitted that the claimant has established a better title to the land in dispute to entitle him to judgment on his claim. There are five ways or methods of proving title to land and the claimant is only required to establish only one of these methods in order to discharge the evidential burden on him. The five ways are:

- (a) Acts of long possession,
- (b) Traditional history,

- (c) Proof of acts of ownership,
- (d) Proof of ownership of connected or adjacent land,
- (e) Proof by production of document of title.

See **Nelson Nwosu Onwugbafor & Ors v Herbert Okoye & Ors** (1996)

DTLR Part 1 page 1 at 33 ó 34.

According to him the claimant has proved his title to the lands in dispute by at least two ways namely:

- (a) Production of documents of title,
- (b) Acts of long possession;

which was corroborated by the evidence of the claimant and his witnesses relying on the case of **Mrs. G.A. Majekodunmi & Ors v Muttu Abina** (2002) 3 NWLR (pt. 755) page 720 at 747. He further submitted that the claimant has identified the parcels of land in dispute vide exhibit C and C1 relying on the case of **A.B. Awere v S. Lasoju** (1975) 1 N.M.L.R. page 100 at 102. He has also duly paid for the parcels of land in dispute vide exhibits D and D1. See **National Electoral Commission v Adams Aliyu Oshiomole** (2009) 4 N.W.L.R. (pt. 1132) page 607 at 665. The evidence of the claimant was not controverted and discredited by the defendants during cross examination. He therefore urged the court to grant all the reliefs the claimant is seeking in this case as he has proved his case on the preponderance of evidence. See **Aregbesola v Oyinlola** (2011) 1 W.R.N. page 33

at 137; **Thomas Nruamah & 4 Ors v Reuben Ebuzoeme & 9 Ors** (2013) 221 LRCN (pt. 1) page 221 at 242; **Tukuru v Sabi** (2013) 222 LRCN (pt. 1) page 65 at 84 ó 85.

Okpebho Esq. submitted on issue 2 that the 1st ó 6th defendants have failed woefully to establish a better title to the land in dispute to entitle them to judgment on their counter claim. A counter claim is a separate and independent action and what applies to the main claim also applies to a counter claim. See **Balogun v Yusuf** (2010) 16 W.R.N. 158 at 179. According to learned counsel the evidence of DW1 is hearsay evidence and it is not admissible under our law. See Section 38 of the Evidence Act 2011 and the case of **Chief Titus Anamasonye Onwugbelu v Mr. Ejiofor Ezebuo & 3 Ors** (2013) 23 WRN 90 at 116. He submitted that the only witness called by the 1st ó 6th defendants in this case did not give any credible evidence in support of their counter claim thereby abandoning the said counter claim and all the relevant paragraphs of their pleading which are in line with their counter claim. See **Aregbesola v Oyinlola** (2011) 1 W.R.N. page 33 at 139. He submitted that the defendants/counter claimants did not lead any evidence as to the description of the land they are laying claim to with certainty and accuracy. They also failed to establish their title to the land in dispute. See **A.B. Awere v S. Lasoju** (supra); **Anyaru v Mandilas Ltd** (2007) 10 N.W.L.R. (pt. 1043) page 462 at 477 ó 478. He urged the court to dismiss the defendants/counter claimantsø

counter claim in its entirety. He submitted that the written address of the defendants/counter claimants is a mere academic exercise and cannot take the place of evidence relying on the case **Salzgitter Stahigmbh v Tunji Dosunmu Ind. Ltd** (2010) 41 WRN page 1 at 19. Learned counsel submitted that the 7th defendant who erected a structure on the land in dispute never entered appearance or filed pleadings in this case despite the court processes and hearing notices that were issued and pasted on the said structure. This is a clear indication that the unknown persons have accepted and admitted the facts pleaded and evidence of the claimant and his witnesses in this case. Facts admitted need no proof. See **Kwara State Ministry of Health & Anor v Mallam Isah Electrical Enterprises** (2012) 1 W.R.N. page 30 at 53; **Obimiami Brick & Stone (Nig.) Ltd v African Continental Bank Ltd** (1992) 3 N.W.L.R. (pt. 229) page 260 at 296 -301.

In conclusion, learned counsel urged the court to enter judgment for the claimant as he has proved his case on the preponderance of evidence to entitle him to the various reliefs he is seeking in this case and dismiss the defendants/counter claimants' counter claim for having failed woefully to prove their counter claim.

I have carefully perused the evidence adduced in this case and the legal submissions of both learned counsel as well as the exhibits tendered in this case.

The issue in this case deals with declaration of title to land. In the case of **Awodi & Anor v Ajagbe** (2015) vol. 242 LRCN 99 at 118 ó 120 the Supreme Court reinstated the five ways of proving title to a land in Nigeria namely:

1. Proof by traditional evidence;
2. Proof by production of documents of title duly authenticated, in the sense that their due execution must be proved, unless they are produced from proper custody in circumstances giving rise to the presumption in favour of due execution in the case of documents twenty years old or more at the date of the contract.
3. Proof by acts of ownership in and over the land in dispute such as selling, leasing, making grant or farming on it or a portion thereof extending over a sufficient length of time numerous and positive enough to warrant the inference that the persons exercising such proprietary acts are the true owners of the land.
4. Proof by acts of long possession and enjoyment of the land which prima facie may be evidence of ownership not only of the particular piece of land with reference to which such acts are done, but also of other land so situate and connected

therewith by locality or similarity that the presumption under Section 35 of the Evidence Act applies and the inference can be drawn that what is true of one piece of land is likely to be true of the other piece of land.

5. 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.

In the same case at page 127 the court held that the weakness of the defendant's case in a land matter touching on declarations, does not assist the Plaintiff's case. He sinks or floats with his case. In an action for declaration of title to land, the land to which the declaration relates must be ascertained with certainty before the court would make a declaration. A plan prepared by a Surveyor and evidence of Surveyor is the best way to resolve the identity of the land. See **Awodi & Anor v Ajagbe** (supra) at page 135. Also **Addah v Ubandawaki** (2015) vol. 241 LRCN 1. In the case **Isaac v Imasuen** (2016) vol. 258 LRCN 217 at 235 the court held that in an action for declaration of title to land, trespass and injunction the claimant must establish his title by supplying credible evidence in proof of his pleadings.

Thereafter the onus shifts on to the defendant to show that he owns possession.

The claimant's case is that he derived his title from Aruogba Community after following due process. The defendant's case is that they sold land to the claimant but that the land has been acquired by the community for a community health centre. According to the defendant the claimant did not verify his documents of title and so his ownership of the parcels of land is questionable. The claimant in proof of his title tendered exhibits A to E1 while the defendant did not tender any exhibit. Exhibit A is the government approval de-reserving the land in Ogba Forest Reserve. Exhibit B and B1 are applications for building plot for the parcels of land in dispute. Exhibits C and C1 are survey plans of the parcels of land in dispute. Exhibits D and D1 are deeds of transfer between the claimant and the Aruogba Community in relation to the parcels of land in dispute. Exhibit C is survey plan SIE/ED09/035 dated 9/02/2009 showing the identity of the parcel of land measuring 200 feet by 400 feet and exhibit C1 is survey plan SIE/ED09/068 dated 27/2/2009 showing the identity of the parcel of land measuring 200 feet by 200 feet. By exhibits C and C1 the claimant has positively identified the parcels of land in dispute in line with the case of **Awodi & Anor v Ajagbe** (supra) and also showing the beacon Nos. These

exhibits were not challenged by the defendants and so the court is enjoined to act on them. See **Kayili v Yilbuk & Ors** (2015) 244 LRCN 108 at 156.

The Aruogba community cannot acquire or reserve land for the purpose of building community health centre, it is the state government that can do that and there is no evidence to the effect that the state government made such compulsory acquisition. See Section 44 of the Nigerian Constitution 1999 (as amended).

From the facts and evidence as well as exhibits adduced in this case it can be seen that the claimant has established title to the parcels of land better than the defendants by at least three methods namely:

- (a) by production of documents i.e. exhibits A ó D1;
- (b) by acts of long possession;
- (c) by acts of ownership i.e. planting of crops etc.

The defendants on the other hand have not proved their case infact they have not denied the claimant's case. If the claimant's case and the defendants' case are placed on the imaginary scale of justice the odds will tilt in favour of claimant. The defendants are clearly trespassers and are adjudged as such.

In sum, I enter judgment in favour of the claimant as he has proved his case on the preponderance of evidence and balance of probabilities. I therefore declare:

- (a) That the claimant is the lawful owner and the equitable title holder of all that piece or parcel of land measuring 200 feet by 200 feet (two hundred feet by two hundred feet) described in Survey Plan No. SIE/ED09/068, with Beacon Nos. F9181M, F9182M, F9183M and F9184M dated 27th February, 2009 and situate at Aruogba Village, Oredo Local Government Area, Edo State and therefore entitled to the grant or statutory right of occupancy in and over the said parcel of land.
- (b) That the claimant is the lawful owner and equitable title holder of all that piece or parcel of land measuring 200 feet by 400 feet (two hundred feet by four hundred feet) described in Survey Plan No. SIE/ED09/035 with C8850M, C8851M, C8852M and C8853M dated 9th February, 2009 and situate at Aruogba Village, Oredo Local Government Area, Edo State and therefore entitled to the grant of statutory right of occupancy in and over the said parcel of land.

- (c) The defendants, their agents, servants, workmen and privies are perpetually restrained from committing any further acts trespass onto the said piece or parcel of land measuring 200 feet by 200 feet (two hundred feet by two hundred feet) described in Survey Plan No. SIE/ED09/068, Beacon Nos. F9181M, F9182M, F9183M and F9184M dated 27th February 2009 and situate at Aruogba Village, Oredo Local Government Area, Edo State.
- (d) The defendants, their agents, servants, workmen and privies are perpetually restrained from committing any further acts of trespass onto the said piece or parcel of land measuring 200 feet by 400 feet (two hundred feet by four hundred feet) described in survey plan No. SIE/ED09/035, Beacon Nos. C8850M, C8851M, C8852M and C8853M dated 9th February 2009 and situate at Aruogba Village, Oredo Local Government Area, Edo State.
- (e) I order the defendants to pay the claimant the sum of ₦1,000,000.00 (one million naira) for trespassing on his parcels of land.

N.B. The claimant is an equitable owner because his documents are not registered in line with the Land Instrument Registration Law.

The counter claim of the defendants on the other hand is dismissed in its entirety as same is lacking in merit and the defendants have failed to prove same on the preponderance of evidence.

Hon. Justice E.F. Ikponmwen,
Chief Judge,
30/11/2017.

Counsel:

R. O. Okpebho Esq. for the claimant.

Chief O. T. Nwoha with J.O. Michael Esq. and S.O. Ogbebor Esq. for the defendants.