

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON WEDNESDAY THE
16TH DAY OF MAY, 2018.

BETWEEN

SUIT NO: HCU/16/2013

MR. DOMINIC IKHELOA í í DEFENDANT TO THE COUNTER CLAIM

AND

1. MR. AMIOHU SYLVESTER }
2. MRS. AMIOHU OBEHI } í í í í í . COUNTER CLAIMANTS

JUDGMENT

Originally, the Defendant to the Counter Claim instituted this suit against the Counter Claimants on the 20th of May 2013 claiming the reliefs as contained in his writ of summons and statement of claim.

Upon service of the court processes on the Counter Claimants, they entered appearance and filed a joint statement of defence/counter-claim.

The Counter Claimants claimed against the Defendant to the Counter Claim as follows:

- I. A declaration that the Counter Claimants are the proper persons entitled to apply and be granted statutory rights of occupancy in respect of the piece/parcel of land measuring approximately 100ft by 150ft containing the Counter Claimants' uncompleted building thereon, lying and situate at Uzenema Road, Arue Uromi, an area within the jurisdiction of this Honourable Court;
- II. An order setting aside the purported sale of the disputed land by the Irewan family to the Defendant to the Counter Claim and to declare

- null and void the Deed of Transfer dated the 2nd day of June 2009 in respect of the said sale, same being a falsified and forged document;
- III. The sum of N1,000,000.00 (one million naira) only being general damages for acts of incursion unto the said piece/parcel of land without the consent and authority of the Counter Claimants; and
 - IV. A perpetual injunction restraining the Defendant to the Counter Claim, his agents, servants and/or privies from further interfering with the said piece/parcel of land.

When the suit became ripe for hearing, the Defendant to the Counter Claim failed to attend the Court to prosecute his claim and the suit suffered a series of adjournments.

Eventually, the Court struck out the claim, fixed a date for the hearing of the Counter Claim and fresh Hearing notice was served on the Defendant to the Counter Claim.

At the trial, the 1st Counter Claimant testified and called five witnesses who testified as DCW1 to DCW5. All through, the Defendant to the Counter Claim never showed up to defend the counter claim.

From the evidence adduced at the trial, the Counter Claimants who are spouses, allegedly purchased the land in dispute from one Augustine Okoduwa *vide* a Deed of Transfer dated the 24/10/2012 tendered as a purchase receipt during the trial as Exhibit A.

The said Augustine Okoduwa allegedly inherited the land from his late father Pius Ehikioya Okoduwa, by virtue of his position as the eldest surviving male child in accordance with the Esan Native Law and Custom of Arue-Uromi.

The late Mr. Pius Ehikioya Okoduwa earlier inherited the parcel of land which originally formed part of a larger expanse of land, from his own deceased father, Pa. Uikhena Okoduwa sometime in 1982 after performing his final burial rites as the eldest surviving son in accordance with the said Esan Native Law.

The traditional history of the land was traced to over one hundred and fifty years ago when Augustine Okoduwa's ancestor, named Pa. Ogbejele deforested a large expanse of land at Uzenema, Arue Uromi, part of which is now in dispute.

The eldest male child of Pa. Ogbejele, was one Pa. Irewan who assisted his father in his farming activities until the death of Pa. Ogbejele over ninety years ago.

Pa. Irewan who succeeded Pa. Ogbejele gave birth to three sons namely, Uikhena, Otti and Ikpefua and the three sons farmed extensively on the large expanse of land until the death of their father.

The Court was informed that upon the demise of Pa. Irewan, none of his children could perform his final burial rites to entitle any of them to inherit the property of their deceased father before their own demise.

That with the death of the three sons of Pa. Irewan who could not perform the final burial rites of their deceased father, the right of inheritance then devolved on Pa. Okoduwa Uikhena, the eldest male grandchild of Pa. Irewan and the eldest surviving son of Pa. Uikhena.

Pa. Okoduwa Uikhena eventually performed the final burial rites of his deceased grandfather, Pa. Irewan and that of his father, Pa. Uikhena and thereafter inherited the vast expanse of land, part of which is now in dispute from his grandfather, Pa. Irewan in accordance with Esan Native Law and Custom applicable in Arue-Uromi.

Pa. Okoduwa Uikhena farmed on the vast expanse of land with members of his family until his death sometime in 1982 and upon his death, his eldest surviving son, Pius Ehikioya Okoduwa, the father of Augustine Okoduwa, performed his final burial rites and inherited the said land and farmed on the land for some time until he relocated from Uromi to Ilorin in Kwara State.

That while Pius Ehikioya Okoduwa was in Ilorin, his wife, Agelina Okoduwa was farming on the land together with Augustine Okoduwa and other members of the family until she relocated to Ilorin to join her husband.

That before the departure of Mrs. Angelina Okoduwa to Ilorin, Pius Ehikioya Okoduwa appointed his relation, Akpakpa Otti to be his caretaker over the land.

That in the course of taking care of the land, Akpakpa Otti started to sell some portions of the land until he was challenged by the owner, Pius Ehikioya Okoduwa.

Akpakpa Otti heeded the warning of Pius Ehikioya Okoduwa and deposed to an affidavit at the High Court of Justice Uromi undertaking to stop further acts of trespass by affirming the ownership rights of Pius Ehikioya Okoduwa.

That after the death of Akpakpa Otti, his relations, Christopher Otti and Joseph Areghan Esene trespassed unto the said vast expanse of land and continued to sell part of it until Pius Ehikioya Okoduwa challenged them.

The matter was reported by Pius Ehikioya Okoduwa to the elders of Arue Uromi and Christopher Otti and Joseph Areghan Esene were warned to steer clear from the land. They also advised persons who had earlier purchased part of the land from Joseph Areghan Esene to recover their money from him.

Thereafter, Pius Ehikioya Okoduwa continued to exercise absolute ownership rights over the said vast expanse of land unchallenged, until his death in May 2010.

The Counter Claimants maintained that the piece/parcel of land now in dispute, is not the property of the Irewan family of Arue but the personal property of Augustine Okoduwa before it was transferred to them.

That Joseph Asiazobor who purportedly transferred the land in dispute to the Defendant to the Counter Claim on behalf of the Irewan family, had earlier trespassed into Augustine Okoduwa's vast expanse of land, part of which is now in dispute and attempted to sell same whereupon, he was promptly challenged by Augustine Okoduwa.

That on the 26th of May 2009, the said Joseph Asiazobor sold the land in dispute to the Defendant to the Counter Claim as of right *vide* a Deed of Transfer dated the 26th of May 2009 whereupon Augustine Okoduwa warned the claimant and Joseph Asiazobor to steer clear from the land in dispute as Joseph Asiazobor had no land there. The said Deed was tendered as Exhibit D.

That there was a serious quarrel between Joseph Asiazobor and the Defendant to the Counter Claim which made Joseph Asiazobor to prepare another agreement purportedly on behalf of the Irewan family in respect of the same parcel of land that he initially sold as of right. The second Deed of Transfer dated the 2nd of June 2009 was admitted in evidence as Exhibit E.

The Counter Claimants maintained that because Augustine Okoduwa disallowed some members of the Irewan family, from interfering with his deceased father's property, Joseph Asiazobor decided to forge the Deed of Transfer, under the guise of Irewan family land.

That the sale of the land in dispute by the Irewan family to the Defendant to the Counter Claim is illegal, unwarranted, and null and void. That the land now in dispute was never at anytime called Ogbejele land or Irewan family land.

That they are not aware that the Irewan family have any other parcel of land in Arue as the disputed land had been the personal property of Augustine Okoduwa's forebears and thereafter, Augustine Okoduwa who transferred same to them.

That Augustine Okoduwa never benefited from the proceeds of sale of Irewan family land as his father; Pius Ehikioya Okoduwa left a vast expanse of land for him. That during the lifetime of Pius Ehikioya Okoduwa, he never sold or allowed any Irewan family member to sell any part of his vast expanse of land to anybody.

That the purchase sum received by Joseph Asiazobor from the Defendant to the Counter Claim was not brought to the house of Pius Ehikioya Okoduwa in the presence of Augustine Okoduwa.

That after acquiring the disputed land, the Counter Claimants commenced construction works on it immediately without challenge from anybody until it got to DPC level when the Defendant to the Counter Claim secretly took photographs of the structures thereon without confronting them.

That the land in dispute is bounded in the front by Uzenema Road, Arue Uromi, on the right by Augustine Okoduwa's land, on the left by Mrs. Cecilia Oboh's land and at the back by Augustine Okoduwa's land.

That the Counter Claimants are the proper persons entitled to the grant of statutory rights of occupancy in respect of the land in dispute having acquired same, legally from the rightful owner.

That the purported sale of the land in dispute by the Irewan family to the Defendant to the Counter Claim is invalid.

At the close of their case, the learned counsel for the Counter Claimants adopted his Written Address.

In his written address, the learned counsel for the Counter Claimants, E.O.Eselebor Esq. from the Law firm of Ayewoh-Odiase & Co., formulated a sole issue for determination as follows:

WHETHER THE DEFENDANTS HAVE LED CREDIBLE EVIDENCE IN PROOF OF THEIR COUNTER-CLAIM ENTITLING THEM TO THE JUDGMENT OF THIS HONOURABLE COURT?

Arguing the sole issue, learned counsel submitted that the counter-claimants have led credible and unchallenged evidence in proof of their counter-claim.

He submitted that they have established their claim to the land in dispute lying and situate at Idukhumu Quarters, Arue Uromi through the production of authentic document of title, Exhibit 5 as well as sufficient acts of possession in line with the principles of law enunciated in the case of: *Morenikeji V Adegbosin (2003) 8 NWLR Part 823, page 612 at 615.*

Counsel submitted that although Exhibit 5, the Deed of Transfer between Augustine Okoduwa and the Counter Claimants cannot be relied upon as a title document in view of its non registration, the acts of possession by the Counter-Claimants Vendor over a long period of time coupled with the Counter-Claimants building activities on the land in dispute, are sufficient to warrant reasonable inference of positive acts of ownership on their part. See the case of: *Onisese V Oyeleye (2008) 21 WRN, page 43 at 48.*

He submitted that the Counter-Claimants also led evidence of traditional history of the land in dispute from the period it was deforested over one hundred and fifty years ago until they acquired same through purchase from Augustine Okoduwa on the 24th of October 2012 vide Exhibit 5.

He traced the traditional history of the land from their vendor's ancestor, Pa Ogbejele who deforested the land in dispute which originally formed part of a large expanse of land, to his eldest surviving son, Pa. Irewan, to Pa. Irewan's eldest son, Pa. Uikhena to Pa. Okoduwa Uikhena to the father of the Counter-Claimants vendor, Pius Ehikioya Okoduwa, to the Counter-Claimants vendor, Augustine Okoduwa.

On what a party who relies on traditional history must prove, he cited the cases of: *Olayeke V Akano (2008) 25 WRN page 121 at 126 and Balogun V Yusuf (2010) 16 WRN page 158 at 162-163.*

Counsel submitted that the evidence of the traditional history of the land which was given by the 1st Counter-Claimant, was corroborated by the DCW2, DCW3 and DCW4 and was neither challenged nor controverted by the Defendant to the Counter Claim.

Furthermore, he posited that the evidence of ownership of the land in dispute by the Counter-Claimants the evidence of forgery of Exhibit 5 by the Defendant to the Counter Claim and other corroborative evidence of ownership led by the defendants, were also uncontroverted.

On the effect of unchallenged and uncontroverted evidence, learned counsel cited the case of: *Abuul V Bensu (2003) 16 NWLR part 845, page 59 at 68.*

He submitted that no aspersion was cast on the evidence of the Counter-Claimants by the Defendant to the Counter Claim in order to weaken its potency and credibility. He submitted that the best time to cast aspersion on the evidence of

a witness is during cross-examination and not afterward and relied on the case of: ***RCC (Nig) Ltd V Edomwonyi (2003) 4 NWLR part 811, page 513 at 519.***

He submitted that a party seeking declaration of title has the onus to discharge his evidential burden of proof by establishing his case on the preponderance of evidence. He said that where as in the instant case, the Defendant to the Counter Claim failed to lead any evidence or challenge the evidence of the Counter-Claimants and their witnesses, the burden of proof becomes minimal. See the case of: ***Abuul V Bensus (Supra) page 67.***

He submitted that by the refusal of the Defendant to the Counter Claim to defend the counter-claim against him, he is deemed to have fully admitted the case presented by the Counter-Claimants in proof of their counter-claim. He maintained that it is trite law that what is admitted needs no further proof. See the case of: ***Adjarho V Agbanelo (2015) 7WRN, page 166 at P. 182 line 40.***

He contended that apart from Exhibit 5 which established their equitable interest in the land in dispute, they went further to prove the source of their Vendor's title through credible and satisfactory evidence in line with the case of: ***Akulaku V Yongo (2002) 94 LRCN page 317 at 319.***

He maintained that the unchallenged evidence to the effect that the Counter-Claimants building on the land in dispute had gotten to roofing stage before they were served with the originating processes in respect of this suit, shows that they were in occupation of the disputed land thus lending credibility to the Counter-Claimants claim to the land in dispute. See: ***Ajibi V Olaewe (2003) 8 NWLR part 822, page 237 at 252 – 253.***

He submitted that the slightest form of possession such as cultivation of a piece of land, erecting a fence thereon and demarcation of same with pegs or survey beacons may be sufficient acts of possession in certain circumstances. See the case of: ***Adeniran V Alao (2002) 4 WRN, page 1 at 9.***

On the issue of general damages, Counsel submitted that general damages are presumed to be the direct, natural and probable result of the act complained of by the Claimant. He said that in the instant case, the 1st Counter Claimant told the Court that their building on the land in dispute had reached roofing stage when the Defendant to the Counter Claim served them court processes, hence they stopped further building activities on the land in dispute.

He submitted that since the act of the Defendant to the Counter Claim stalled the building project on the land in dispute, they have suffered some losses which flowed from their conduct and are entitled to general damages as per their counter-claim.

On the meaning of general damages, learned counsel referred to the case of: ***Ya'u V Dikwa (2001) FWLR part 62, page 1987 at P. 2005, paras. C.D;*** and

on the meaning of credible evidence, he referred to the case of: *Agbi V Ogbah (2005) 8 NWLR part 926, page 40.*

On the status of the Statements on Oath of the Defendant to the Counter Claim and his witnesses, he submitted that since the said written depositions were not adopted to assume the character of evidence to be considered and evaluated by the Court, same should be discountenanced in their entirety as if they never existed in the first instance. See the case of: *Ibrahim V Okutepa (2015) All FWLR part 785, page 331 at 336.*

Finally, he submitted that considering the fact that the Counter-Claimantsø have discharged their evidential burden of proof, judgment should be entered in their favour as per their counter-claim.

I have carefully considered all the processes filed in this suit, together with the evidence led, the exhibits admitted in the course of the hearing and the address of the learned Counsel for the Counter-Claimantsø

As I have already observed, the Defendant to the Counter-Claimant filed a Defence to the Counter-Claim and frontloaded the statements of some witnesses in defence to the Counter-Claim. Thereafter, he abandoned the trial and never showed up in Court. Neither him nor any of his witnesses appeared in the Court to adopt their statements on oath.

Learned counsel has urged the Court to discountenance the deposition of the witnesses on the ground that the statements must be adopted before the Court can rely on them.

It is settled law that a witness whose statement has been frontloaded must physically attend the Court and enter the witness box to adopt his statement before the Court can act on it. The effect of the failure to adopt it is that the written deposition is deemed abandoned.

In the case of: *Jones Fisheries Ltd. vs. M & M Enterprises Nigeria Ltd. (2008) BLR (Pt.1) 248, Okunnu, J.* of the Lagos High Court held that the written deposition: *“only come to be effective and relevant to the court after the person who made them has entered the box and confirmed them positively to be his evidence-in-chief in the matter at hand”.*

The above position was adopted by the Court of Appeal in the case of: *Idris vs. ANPP (2008) 8 NWLR (Pt.1088) 153* where they stated that: *“...evidence must be adduced in proof of a witness statement on oath otherwise, it is useless.”* See also the case of: *IBRAHIM & 67 OTHERS VS OKUTEPA (2015) ALL*

FWLR PART 785 PAGE 331 RATIO 4 AT PAGE 336 which was relied upon by the learned counsel for the Counter-Claimants.

Applying the foregoing principles to the instant case, I agree entirely with the learned counsel for the Counter-Claimants that the depositions of the aforesaid witnesses are deemed abandoned and this Court cannot rely on them.

Thus, the evidence of the Counter-Claimants remains unchallenged.

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

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

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

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

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

The sole Issue for Determination in this suit is: ***whether the Counter-Claimants are entitled to the reliefs claimed in their Counter-Claim in this action.***

For the avoidance of doubt the Counter-Claimants' claims are as follows:

- I. A declaration that the Counter Claimants are the proper persons entitled to apply and be granted statutory rights of occupancy in respect of the piece/parcel of land measuring approximately 100ft by 150ft containing the Counter Claimants' uncompleted building***

thereon, lying and situate at Uzenema Road, Arue Uromi, an area within the jurisdiction of this Honourable Court;

- II. An order setting aside the purported sale of the disputed land by the Irewan family to the Defendant to the Counter Claim and to declare null and void the Deed of Transfer dated the 2nd day of June 2009 in respect of the said sale, same being a falsified and forged document;*
- III. The sum of N1,000,000.00 (one million naira) only being general damages for acts of incursion unto the said piece/parcel of land without the consent and authority of the Counter Claimants; and*
- IV. A perpetual injunction restraining the Defendant to the Counter Claim, his agents, servants and/or privies from further interfering with the said piece/parcel of land.*

In a claim for a declaration of a statutory right of occupancy 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 there are five ways of proving ownership of land. These are as follows:

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

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

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

In the instant suit, the learned counsel for the Counter-Claimants did not categorically state the means of proof they relied on. However from the evidence led, they appear to be relying on the first, second, third and fifth means of proof.

To wit: ***proof by traditional evidence; by the production of documents of title; acts of ownership; and acts of long possession and enjoyment of the land***

The Counter-Claimant's traditional evidence of title was traced from the period the land was deforested over one hundred and fifty years ago until they acquired it by purchase from Augustine Okoduwa.

They traced the traditional history of the land from their vendor's ancestor, Pa Ogbejele who deforested the land in dispute which originally formed part of a large expanse of land, to his eldest surviving son, Pa. Irewan, to Pa. Irewan's eldest son, Pa. Uikhena to Pa. Okoduwa Uikhena to the father of the Counter-Claimant's vendor, Pius Ehikioya Okoduwa and finally to their vendor, Augustine Okoduwa.

This evidence of traditional history of the land which was neither challenged nor debunked remains good and credible evidence which can be relied upon in this trial. I have no reason to disbelieve it. See: ***Monkom vs. Odili (2010) 2 NWLR (Pt.1179) 419 at 442; and Kopek Construction Ltd. vs. Ekisola (2010) 3 NWLR (Pt.1182) 618 at 663.***

On the proof by the production of title documents, I agree with the learned counsel for the Counter Claimants that Exhibit A cannot convey legal title because it is unregistered.

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

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

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

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

On acts of ownership and possession, the Counter-Claimants led unchallenged evidence to prove that they had erected a building which was at roofing level on the land in dispute. This is evidence of occupation of the disputed land. Acts of possession are one of the ways of proving title to land. See: **Section 35 of the Evidence Act, 2011** and the case of: ***Alikor vs. Ogwo (2010) 5 NWLR (Pt.1187) 281 at 312.***

On the claim for the sum of ₦1,000, 000:00(one million naira) as general damages for trespass, it is settled law that General Damages are presumed by law as the direct natural consequences of the acts complained of by the Claimant against the Defendant. The assessment of general damages is not predicated on any established legal principle. Thus, it usually depends on the peculiar circumstances of the case. See: ***Ukachukwu vs. Uzodinma (2007) 9 NWLR (Pt.1038) 167; and Inland Bank (Nig.) Plc vs. F & S Co. Ltd. (2010) 15 NWLR (Pt.1216) 395.***

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

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

The quantum of damages will depend on the evidence of what the Claimants have suffered from the acts of the Defendant.

In the instant case, the Counter Claimants adduced unchallenged evidence to prove that their building on the land in dispute had reached roofing stage when the Claimant served them with court processes which prevented them from continuing with the project.

I am in agreement with the learned counsel that since the acts of the Defendant to the Counter Claim stalled the building project on the land in dispute, they have suffered some losses which flowed from their conduct and are thus entitled to the award of general damages. I think the claim for the sum of ₦1, 000, 000:00(one million naira) as general damages for trespass is quite modest and reasonable.

On the claim for perpetual injunction, it is settled law that where damages are proved and payable for trespass, the Court ought to grant an auxiliary claim for injunction. See: ***Ibafon Co. Ltd. vs. Nigerian Ports Plc. (2000) 8 NWLR (Pt.667)***

86 at 102; Balogun vs. Agbesanwa(2001) 17 NWLR (Pt.741) 118; and Onabanjo vs. Efunpitan (1996) 7 NWLR (Pt.463) 756 at 760-761.

Also, in the case of :**Obanor vs. Obanor (1976) 2 S.C.1**, the Supreme Court held that where damages is awarded for trespass to land and there is an ancillary claim for injunction, the Court will grant perpetual injunction. This is the situation in the instant suit.

On the whole, the sole issue for determination is resolved in favour of the Counter-Claimants. The counter-claims succeed and judgment is entered in favour of the Counter-Claimants as follows:

- I. A declaration that the Counter Claimants are the proper persons entitled to apply and be granted statutory rights of occupancy in respect of the piece/parcel of land measuring approximately 100ft by 150ft containing the Counter Claimants' uncompleted building thereon, lying and situate at Uzenema Road, Arue Uromi, an area within the jurisdiction of this Honourable Court;***
- II. An order setting aside the purported sale of the disputed land by the Irewan family to the Defendant to the Counter Claim and to declare null and void the Deed of Transfer dated the 2nd day of June 2009 in respect of the said sale, same being a falsified and forged document;***
- III. The sum of N1,000,000.00 (one million naira) only being general damages for acts of incursion unto the said piece/parcel of land without the consent and authority of the Counter Claimants; and***
- IV. A perpetual injunction restraining the Defendant to the Counter Claim, his agents, servants and/or privies from further interfering with the said piece/parcel of land.***

Costs is assessed at N20, 000.00 (twenty thousand naira) in favour of the Counter-Claimants.

P.A.AKHIHIERO
JUDGE
16/05/18

COUNSEL:

P.E. Ayewoh Odiase Esq. í í í í í í í í í Counter-Claimants.

Unrepresented...í í í í í í í í í í Defendant to the Counter-Claim.