IN THE HIGH COURT OF JUSTICE
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON THURSDAY THE
29TH DAY OF APRIL, 2021

BETWEEN: SUIT NO: HCU/4/2014

MR. BENSON OKOSUN……..…….CLAIMANT

AND

1. MR. DAVID ABOIRALOR
2. MR. ANTHONY E. OZIEGBE } ……..DEFENDANTS
3. MR. PETER ODION EROMOMENE

JUDGMENT

The Claimant instituted this suit *vide* a Writ of Summons and Statement of Claim dated the 20th day of January, 2014, seeking the following reliefs:

(a) A declaration that the claimant is the proper person entitled to apply for and be granted statutory right of occupancy in respect of the piece/parcel of land measuring approximately 400ft by 800ft lying and situate at Uzeguah Quarters, Efandion Village, Uromi an area within the jurisdiction of this Honourable Court; and

(b) A perpetual injunction restraining the defendants, their agents, servants, privies and/or workmen from further encroaching into the said land, now in dispute.

At the hearing, the claimant testified and called three witnesses; Friday Ehiametalor, Saturday Eraga and Omokhegbele Okosun who testified as CW1, CW2 and CW3 respectively.

On their part, the defendants also testified and called two witnesses, Felix Omenlo Okhomenlo and Alfred Okosun who testified as DW1 and DW2 respectively. At the close of the defendants' case, the suit was adjourned for adoption of final written addresses. Thereafter, the suit was adjourned for judgment.

The claimant's case is that his great grandfather, late Pa Ekah deforested a vast expanse of land, part of which is now in dispute sometime in the 17th century. According to him, after the deforestation, the said Pa. Ekah farmed extensively on the vast expanse of land, until his death whereupon the claimant's grandfather, Pa. Ogbebor performed his final burial rites and inherited the vast expanse of land.

According to the claimant, during his lifetime, Pa. Ogbebor gave part of his vast expanse of land to the Colonial Government to build the present day Atani Primary School, Uromi. After the death of his grandfather in 1936, the claimant's father, Pa Okosun Ogbebor allegedly inherited the said vast expanse of land, part of which is in dispute after performing the final burial rites of Pa. Ogbebor in accordance with Esan Native Law and Custom of Efandion-Uromi.

The Claimant told the Court that his father farmed extensively on the said vast expanse of land unchallenged until his death in the year 1966 whereupon, he inherited same after performing his father's final burial rites, the same year and continued to farm on it until he fell sick and he had to give a part of the land to some other persons to be farming on it.

According to the Claimant, one Stephen Okoyomon Okosun (now deceased) and Anslem Balogun have boundaries with the land in dispute. He said that Saturday Eraga who testified as CW2 has been assisting Anslem Balogun to take care of his land having common boundary with the land in dispute because Anslem Balogun resides in Kaduna. He said that subsequently, the defendants and late Rev. Michael Ugege took advantage of his ill health to trespass on the land in dispute.

On their part, the Defendants also testified and called two witnesses, Felix Omenlo Okhomenlo and Alfred Okosun who testified as DW1 and DW2 respectively.

The Defendants' case is that the parcel of land measuring approximately 400ft by 800ft lying situate and being at Uzegua Quarters, Efandion Uromi is the bonafide property of the 3rd Defendant and forms part of a vast expanse of land which the 3rd Defendant acquired through valid rights of purchases.

According to the Defendants, sometime in the early 16th century, one Pa. Odeva (now deceased), who was the great grandfather of the 2nd Defendant, was the first person to settle in the entire Efandion which includes Uzegua Quarters, Efandion Uromi. The said Pa. Odeva allegedly deforested a vast expanse of land from Idumu- Obodo down to a major part of the area now known as Uzegua including part of the land in dispute.

According to them, the people now known as the Uzegua are natives of Idumu- Oniha Quarters, Efandion Uromi who came to settle in Uzegua after its deforestation. They alleged that the Idumu-Oniha people originated from Ewohimi (Okaigben) before they came to settle in Efandion in the late 16th century.

According to them, one Uwehende being the leader of the Uzegua people, met Pa. Odeva and was amongst the first settlers put into possession of part of the forest land by Pa. Odeva and known today as Uzegua.

The Defendants posited that part of the land measuring 400ft x 800ft being now in dispute forms part of the land inherited by late Pa. Ijiekhuemen after the death of late Pa. Egbe, son of late Pa. Odeva which he inherited after performing the final burial rites as demanded by custom.

Pa. Egbe being the eldest surviving son of late Pa. Odeva could not perform his father's final burial ceremony and after his death, Pa. Ijiekhuemen performed the final burial rites of late Odeva, inherited his properties and continued to farm on the vast land unchallenged throughout his life time.

Pa. Ijiekhuemen in his life time had many children including Oziegbe, Egbenya, Okogbo and others. With the support of his children, Ijiekhuemen planted yam, cassava, maize, millet and beans on the land.

Upon the demise of Pa. Ijiekhuemen, his eldest surviving son Pa. Oziegbe performed his final burial ceremony as required by custom and inherited his late father's vast expanse of land including part of the 400ft x 800ft now in dispute and continued to farm on it ably assisted by his children amongst whom were: Igene, Peter, Moses, Raphael, Anthony (2nd Defendant) Awo and a host of others.

As a result of the growth and expansion of his family, Pa. Oziegbe alienated and shared a part of his land during his life time amongst those of his children that were already married

in the year 1963. The children who benefited from the sharing were: Igene Oziegbe, Peter Oziegbe, Moses Oziegbe, Raphael Oziegbe and Anthony Oziegbe (2nd Defendant). According to the Defendants, part of the land measuring 400ft x 800ft now in dispute forms part of the vast expanse of land late Pa. Oziegbe gave to Igene and Raphael Oziegbe his first and fourth sons to settle in.

After the Customary gift, Raphael Oziegbe took physical possession of the land and continued to farm on it unchallenged in the company of his wife and children until his death. Oziegbe Ijiekhuemen died on the 21st day of May, 1965 and Igene Oziegbe performed the final burial ceremony as required by custom and inherited his late father's remaining and unshared vast expanse of land.

Raphael Oziegbe remained in undisturbed and unchallenged possession of the entire land given to him by his late father until he sold part of the land measuring 200ft x 300ft to one Dr. Stephen E. K. Okiye who has been in undisturbed possession of same till date.

Upon the demise of Raphael Oziegbe, his son Monday Oziegbe performed his burial ceremony and inherited the remaining vast expanse of land measuring approximately 300ft x 300ft which forms part of the 400ft x 800ft now in dispute.

After inheriting the land, Monday Oziegbe farmed on the land for a while and later authorized the 2nd Defendant to continue farming on the land and act as the caretaker of same.

The 2nd Defendant continued to farm on the land until when Monday Oziegbe sold part of the land in dispute measuring 300ft x 300ft to the 3rd Defendant while the 2nd Defendant signed as a witness to the sale of the land.

The 2nd Defendant informed the Court that the entire expanse of land his late brother, Raphael Oziegbe acquired vide Customary Gift from their late father measures 300ft x 500ft and shares common boundaries with the following: A Farm Foot Path, Mr. Igene Oziegbe, Mr. Aigbonoluorianosen and the Ugege's family.

The 2nd Defendant stated that the 3rd Defendant withdrew the caretaker-ship from him immediately after he was given possession by Monday Oziegbe but was later recalled in the year 2004 by the 3rd Defendant to be farming on the land and other adjourning land belonging to the 3rd Defendant which is now in dispute. He alleged that he was farming on the vast expanse of land belonging to the 3rd Defendant unchallenged till sometimes in the year 2013 when he started noticing some strange faces on the land which he reported to the 3rd Defendant.

The 3rd Defendant denied buying the land in dispute or any other land from either the 1st or 2nd Defendants and stated that he acquired title to the land measuring 400ft x 800ft now in dispute which forms part of a vast expanse of land from three different people i.e. Rev. M. O. Ugege, Mr. Joseph Ugege and Pastor John Ugege (jointly) on the one hand, Mr. Sunday Aigbonoluorianosen and Mr. Monday Oziegbe respectively and separately. That before he purchased the various parcels of land, he investigated the title and were confirmed by Elders/people of Uzegua to be the bona fide properties of the various Transferors. That after the purchase, he took physical possession and started to farm on the vast expanse of land by planting crops such as cassava, maize, yam, beans etc unchallenged before commissioning the 2nd Defendant in 2004 to be farming on the entire land as his caretaker in the year 2004.

At the trial, the 2nd and 3rd Defendants denied destroying any cement block used for boundary and stated that there is no block boundary on the land but stated that they affixed a sign post on one of the palm trees to warn prospective purchasers and land speculators. They also denied ever meeting or being confronted by Saturday Eranga in respect of ownership of the land now in dispute by the Claimant.

The 1st and 2nd Defendants stated that the grandmother of Late Rev. M.O. Ugege is late Madam Akokore Ujadughele who was the immediate biological younger sister to late Pa. Ogbebor, the grandfather of the claimant. That the said Madam Akokore Ujadughele had four surviving children i.e late Madam Eka-Iria Okpiabalor. Late Pa. Ogbebor Ekah, late Madam Akokore Ujadughele and Late Pa. Okhomenbhelo.

According to them, the late Madam Akokore Ujadughele left Ebhoiyi to Uzegua Efandion, Uromi to stay with her eldest biological brother, Late Pa. Ogbebor for refuge and protection with her only surviving son Ugege Ujadughele when he was barely a year old. About that period, one late Madam Eka-Iria Okpiabalor also came down from Ukoni with her three children i.e Irete, Aboiralor and Aigbonoluorianosen after the death of her husband late Pa. Okpiabalor to seek refuge in her younger brother, Pa. Ogbebor's house. There she met late Madam Akokore Ujadughele her younger sister and her son Ugege Ujadughele.

Pa. Ugege Ujadughele grew up under the tutelage of late Pa. Ogbebor Ekah while rendering services to him by farming, hunting and doing all other services and works assigned to him by his uncle for a period of well over forty (40) years. When Pa. Ugege Ujadughele became matured enough to marry, late Pa. Ogbebor Ekah got him a wife by paying the dowry of Mrs Ekemekhole Ugege and settling all necessary traditional/ customary rites as required by the traditional law. That marriage produced Rev. M.O Ugege, Pst John Ugege and Mr. Joseph Ugege who all joined their father, grandmother and others to serve their late uncle, Pa. Ogbebor Ekah.

According to the narration, sometime in 1947, the late Pa. Ogbebor Ekah approached late Pa. Aneni Uzo Alenbalulu his uncle to give late Ugege Ujadughele a piece of land to enable him build his own house due to some unresolved crisis in his family. The late Pa. Aneni Uzo Alenbalulu allegedly obliged him and gave Late Pa. Ugege Ujadughele a piece of land on the right hand side of the Uromi/Ubiaja Road, Uzegua Quarters, Efandion Uromi where Late Pa. Ugege Ujadughele built his own residential building, which land and building late Rev. Michael O. Ugege inherited alongside part of the land now in dispute as the eldest surviving son of Late Pa. Ugege Ujadughele after performing the necessary burial rites.

They stated that even after late Pa. Ugege Ujadughele had erected his residential building on the piece of land given to him by late Pa. Aneni Uzo Alenbalulu, he still continued to serve late Pa. Ogbebor Ekah because he had no farm land of his own. The late Pa. Ogbebor Ekah had two separate vast expanse of farm land at Uzegua Quarters, Efandion Uromi, namely Ogo Akpogho and Ojia Ikpovu farm land. Ogo Akpogho was closer home and was always being used for rotational farming by late Ogbebor Ekah to Ojia Ikpovu which was far and hardly farmed on.

According to them, when late Pa. Ogbebor Ekah wanted to settle anyone who rendered unpaid services of farming and hunting for him, he normally made a free customary gift of farm land to them at Ogo-Akpogho. They said that is how he gave Late Pa. Ugege Ujadughele a free customary gift of a piece of land measuring then eight (8) native plots at Ogo-Akpogho farm land, Uzegua Quarters, Efandion Uromi which is on the left hand side of Uromi/Ubiaja Road, Uzegua Quarters, Efandion and forming part of the land now in dispute next and sharing boundaries with late Aigbonoluorianosen's land which was also orally and freely given to him by Late Pa. Ogbebor Ekah, late Oziegbe's land, Late Oseghale Okosun land and a foot path.

They stated that the customary/oral gift of the piece of land by late Pa. Ogbebor Ekah to late Pa. Ugege Ujadughele and all those that served him was made in the very presence of late. Pa. Okosun Ogbebor (the claimant's father who was the eldest son of late Pa. Ogbebor

Ekah), late Pa. Okhomenbhelo Ekah, the father of Mr. Felix O. Okhomenbhelo (aka Omenlo) and was also communicated to Late Pa. Aneni Uzo Alenbalulu by Late Pa. Ogbebor Ekah himself.

They stated that all through the remaining days of late Pa. Ogbebor Ekah, late Pa. Ugege Ujadughele took possession and exercised every right of ownership over the piece of land of eight (8) native plots by farming and planting on the land in the company of his wife and children unchallenged and undisturbed until his death in the year, 1976 and was buried in his own house at Uzegua Efandion Uromi.

They stated that upon the death of Late Pa. Ugege Ujadughele, Rev Michael O. Ugege being the eldest surviving son buried and performed his father's final burial ceremony and inherited his father' assets and liabilities including the building on the land given to him by late Pa. Aneni Uzo Alenbalulu, being where he was buried and the vast expanse of farm land given to him by late Pa. Ogbebor Ekah which forms part of the land now in dispute. After the burial ceremony of late Pa. Ugege Ujadughele, the Late Rev. Michael O. Ugege in company of his wife and younger ones namely: Mr. Joseph Ugege (now deceased) and Pastor John Ugege continued to farm on the land and exercise every right of ownership unchallenged and undisturbed by late Pa. Okosun Ogbebor the claimant's biological father or any other person.

The defendants stated that the claimant's father died in the year 1992, and the claimant was only able to perform his late father's final burial in the year 2010, since the claimant was not around/present even when his late father was buried. The Defendants alleged that the claimant was not present when his late father was buried and the people that buried him were members of the "JEHOVAH WITNESSES" and his close relatives including the 1st defendant.

They alleged that throughout the life time of the claimants father, he did not dispute title or challenge either late Pa. Ugege Ujadughele the father to late Rev. Michael O. Ugege or Late Rev. Michael Ugege or any of those his late father made a customary free gift to, because he was aware of the gift. They alleged that Mr. Felix Okhomenbhelo being the eldest son of late Pa. Okhomenbhelo Ekah grew up under the services of late Pa. Ogbebor his uncle and knows much about the land owned by his uncle late Pa. Ogbebor Ekah and the customary free gifts he made to all those that served him.

According to the defendants, sometime in 1995, while Rev. Michael O.Ugege was on his pastoral assignment in Benin City a boundary dispute erupted between the Oziegbe family and Rev. Michael O. Ugege, and the dispute was resolved in the year, 1997 when Mr. Felix O. Okhomenbhelo brokered peace between the Oziegbe family and the Ugege family over the boundary of the land now in dispute. That after the settlement of the boundary dispute the late Rev. Michael O.Ugege's family members continued to farm on the land, until the Ugege family jointly sold the land to the 3rd defendant sometime in 1998.

The Defendants stated that Felix O. Okhomenbhelo who they alleged is a cousin to the claimant participated actively in the sale and transfer of the land measuring approximately 310ft by 405ft by 100ft by 205ft by 200ft by 200ft from the Ugege family to the 3rd defendant, by not only acting as a land speculator/agent to the 3rd defendant but also signed the deed of transfer.

The defendants maintained that although the claimant is the eldest surviving son of his father, late Pa. Okosun Ogbebor, he is not the owner of the piece /parcel of land measuring approximately 400ft by 800ft or any part thereof lying situate on the left hand side of Uromi/Ubiaja Road, Uzegua quarters, Efandion Uromi.

At the close of evidence, the learned counsel for both parties filed their written addresses and adopted same.

In his written address, the learned counsel for the Claimant, ***Dr. P.E.Ayewoh-Odiase*** formulated the following issues for determination:

1. WHETHER THE CLAIMANT HAS FULLY DISCHARGED HIS EVIDENTIAL BURDEN OF PROOF ENTITLING HIM TO THE JUDGMENT OF THIS HONOURABLE COURT?

2. WHETHER THE OWNERSHIP CLAIM OF THE 3RD DEFENDANT TO THE LAND IN DISPUTE IS NOT SPURIOUS AND NEBULOUS?

Thereafter, the learned counsel for the Claimant argued the two issues seriatim.

ISSUE 1:

WHETHER THE CLAIMANT HAS FULLY DISCHARGED HIS EVIDENTIAL BURDEN OF PROOF ENTITLING HIM TO THE JUDGMENT OF THIS HONOURABLE COURT?

Arguing Issue 1, the learned counsel submitted that the claimant has led cogent and credible evidence in proof of his claim before this Honourable Court. He further submitted that the claimant who relied on traditional history, led evidence of how the land in dispute which formed part of the vast expanse of land was deforested by his great grandfather after which it devolved on his grandfather, then to his father, and finally on him through inheritance. He submitted that the evidence of the claimant is consistent with evidence of traditional history and cited the case of ***Iroagbara V Ufomadu (2009) 30 W.R.N, Page 1 at P. 16 lines. 10 – 15***.

He submitted that the claimant also led credible evidence of the identity of the land in dispute. On the duty of a party to properly identify the land to which his claim relates, he cited the case of ***Ogedingbe V Balogun (2007) Vol. 163 L.R.C.N, Page 197 at page 215FK***.

He further submitted that the claimant stated in his Statement on Oath of 20/1/2014 that he shares common boundary with Stephen Okoyomon Okosun, now deceased and Anslem Balogun. That the claimant called Saturday Eraga, CW2 the caretaker of Anslem Balogun's land to confirm his claim of having common boundary with Anslem Balogun. On the importance of evidence of boundary neighbour, he cited the case of ***Shoshai Gambo V Zundul Turdam (1993) 6 N.W.L.R. part 300 page 500 at 505.***

Learned counsel submitted that the evidence of Friday Ehiamentalor who told the Court that he bought land from late Stephen Okoyomon Okosun, claimant's boundary neighbour and thereby shares boundary with the claimant has further consolidated the ownership claim of the claimant in respect of the land in dispute. On the onus of proof in civil cases, he cited the case of ***Organ V Nigeria Liquified Natural Gas Limited (2015) 11 WRN page 1 at P. 40 lines. 20 – 25.***

He submitted that there is undisputed evidence by all the parties that the land in dispute forms part of a large expanse of land originally deforested by the claimant's great grandfather, late Pa Ekah. That the DW2, Felix Omenlo Okhomenlo admitted during cross-examination that the land in dispute forms part of a large expanse of land deforested by the claimant's grandfather in the seventeenth century. He said that the pertinent issue that has arisen for resolution is whether the claimant's grandfather, Pa Okosun Ogbebor who inherited the said vast expanse of land from Claimant's great grandfather, actually gave the land in dispute or any part thereof as a gift to Rev. Ugege's father and other persons from whom Peter Odion Eromomene allegedly acquired title?

He posited that the claimant's evidence reveals that his grandfather, Pa. Ogbebor died in 1936 whereupon his father inherited Ogbebor's vast expanse of land part of which is in

dispute and was in exclusive possession until his death in 1966 whereupon he, the claimant inherited the land in dispute. He posited that this piece of evidence by the claimant relating to the year his grandfather died as contained in paragraph 5 of the claimant's further Statement on Oath of 29/4/2016, remains unchallenged and uncontroverted. On the effect of unchallenged evidence, he cited the case of ***Benbock Ltd V First Atlantic Bank PLC (2007) 51 W.R.N, page 181 at p. 193 lines 20 – 30.***

He further submitted that the defendants who had the opportunity to challenge that piece of evidence relating to the death of the claimant's grandfather in 1936, did not do so during cross-examination. On the effect of failure to challenge a witness on a particular matter, he cited the case of ***Gaji V Paye (2003) 8 NWLR part 823, page 583***.

He submitted that if the said piece of evidence had been dislodged by the defendants during cross-examination, the claim of the defendants that the claimant's grandfather gave out the land in dispute as a gift in 1947 would have been sustainable. He further submitted that the effect of the defendants' inability to dislodge that piece of evidence is that it is not possible for the claimant's grandfather who died in 1936 to give out the land in dispute as a gift in 1947, eleven years after his death. He therefore submitted that the defendant's inability to challenge the said piece of evidence amounts to admitted facts which need no further proof. For this view, he cited the case of ***Olosun V Ayanrinola (2009) 16 W.R.N. page 113 at P. 125 lines 25 – 30***.

Counsel submitted that if this Honourable Court resolves the issue of whether or not, a gift was made by the claimant's grandfather to the Peter Eromomene's transferors against the defendants, other issues in this suit become merely academic or hypothetical. On whether the Court can entertain academic issues, he cited the case of ***Mudiaga-Erhuen V Independent National Electoral Commission (2003) 5 N.W.L.R. part 812, page 70 at pp. 92 to 93, paras. H – B***.

He submitted that the law is trite that once it is proved, as in the instant case, that original ownership of property is in a party, the burden of proving that the said party has been divested of the ownership, rests on the other party. See the case of ***Orlu V Gogo-Abite (2010) Vol. 181 LRCN, page 193 at page 216 EE.***

He submitted that the defendants have failed to prove that the original ownership of the land in dispute no longer resides with the claimant in line with the above judicial authority. He maintained that the evidence of the claimant and his witnesses has passed the acid test of what a claimant must establish in order to succeed in a claim for declaration of title. He referred the Court to the case of ***Obineche V Akusobi (2010) 30 WRN page 117 at P. 137 lines. 25 – 50*** where the Supreme Court held as follows:

"In order to succeed in a claim for declaration of title to land, the Court must be satisfied as to:

(a) The precise nature of the title claimed, that is to say, whether it is title by virtue of original ownership, or customary grant or conveyance or sale by customary law or long possession or otherwise.

(b) Evidence establishing title of the nature claimed must be credible, convincing and unequivocal".

He therefore submitted that since the claimant has established his title to the land in dispute through credible evidence by leading evidence of traditional history and long possession, issue one should be resolved in the affirmative.

ISSUE TWO:

WHETHER THE OWNERSHIP CLAIM OF THE 3RD DEFENDANT TO THE LAND IN DISPUTE IS NOT SPURIOUS AND NEBULOUS?

On Issue two, learned counsel submitted that the 3rd defendant's ownership claim to the land in dispute is bare, spurious and unfounded. He further submitted that from the contradictory and irreconcilable, evidence of the 1st and 2nd defendants and their witnesses, it is obvious that the 3rd defendant's ownership claim is shrouded in mystery and conjecture.

That while DW2 told the Court that he has been farming on the land in dispute for about fifteen years, the 2nd defendant who stated that he has been the caretaker for the 3rd defendant in respect of the land in dispute since 2004, told the Court under cross-examination that apart from Mrs. Eromomene and Mrs. Obiyan Maria whom he gave land to as reflected in paragraph 4(b) of his Statement on Oath, no other person has ever farmed on the land in dispute since 2004.

That while the 2nd defendant told the Court that he has been the caretaker in respect of the land in dispute since 2004, the DW2 who claimed to have been farming on the land in dispute for a period of about fifteen years, however told the Court under cross-examination that he does not know whether the 2nd defendant is aware of his farming activities on the land in dispute. Furthermore, the DW2 admitted under cross-examination that the 2nd defendant has never met him farming on the land in dispute.

That while the DW2 told the Court in paragraph 12 of his Statement on Oath that he has been farming on rotational basis on about nine native plots forming part of the entire plots of land in dispute, he however told the Court under cross-examination that he does not know whether the land in dispute is up to nine native plots.

That while the DW1 told the Court in paragraph 6 of his Statement on Oath that the claimant's father died sometime in July 1966, paragraph 32 of the defendants' consequential amended statement of defence and paragraph 12 of the 2nd defendant's Statement on Oath reveal that claimant's father died in the year 1992.

That while the DW1 stated in paragraphs 29 and 30 of his Statement on Oath that he signed as a witness to Rev. Michael Ugege and the son of late Aigbonoluorianosen in respect of the land transactions between the aforementioned persons and the 3rd defendant relating to the land in dispute, he however told the Court under cross-examination that he is not aware that part of the land in dispute was sold to the 3rd defendant.

Again, learned counsel pointed out that the DW1 stated in paragraphs 23 and 24 of his Statement on Oath that before and after the claimant performed his father's final burial rites in the year 2010, he took him round his grandfather's remaining land, but he told the Court under cross-examination that the claimant has been down with stroke for over twenty years.

He submitted that the aforesaid pieces of evidence are not only contradictory and irreconcilable, but highly incredible considering the fact that the claimant who has been down with stroke for over twenty years and consigned to a wheel chair, could not have been taken to the land in dispute by the DW1 for the purpose of showing him his deceased father's property. On effect of material contradiction, he cited the case of ***Akande V Oyewole (2003) 11 NWLR (Pt 831), 343 at 350 – 351*** and on the meaning of incredible evidence, he cited the case of ***Irawo-Osan V Folarin (2008) 49 WRN page 127 at p. 150 lines 5 – 10***.

He further submitted that it is not the duty of the Court to pick or choose which of the defendants' conflicting stories to believe or disbelieve and cited the case of ***Adegbayi V Ishola (2003) 11 NWLR part 871, page 353 at 350 – 351***.

He submitted that the defendants and the DW1 who alleged that the land in dispute was gifted to Rev. Michael Ugege's father and others could not state when the said gift was made by the claimant's grandfather. He said that no date was mentioned in the Statements on Oath of the defendants and their witnesses as the alleged date the said gift was made by the claimant's grandfather. He contended that it is not enough for a party to make a bogus allegation without particulars to substantiate same. That he who alleges must prove. See the

case of ***Mobil Production Nig. Unlimited V Asuah (2007) FWLR Part 107; Page 1196 at P. 1228 Para 9 – J***.

He further submitted that a party such as the 3rd defendant who relied on documents of title must establish that the said documents were duly executed in his favour by an acknowledged owner of the land in dispute. He submitted that the 3rd defendant has failed to establish that he acquired title from the acknowledged owners of the land. He referred to the case of ***Adeniran V Alao (2002) FWLR Part 90, Page 1285 at P. 1317 Paras. C – J***, where the Supreme Court stated as follows:

"One of the five ways of proving title to land is by the production of the documents of title in favour of the claimant (as the appellant in the case in hand) by an acknowledged owner of the land in dispute".

Learned counsel submitted that it is doubtful whether Peter Odion Eromomene who testified as the 3rd defendant is actually called Peter Odion Eromomene and not Paul Akhere Eromomene.

He further submitted that whereas, the 3rd defendant who testified as Peter Odion Eromomene denied ever bearing the name "Paul Akhere Eromomene, Exhibits "D" and "E", Court processes, i.e. affidavits signed and filed by him in respect of this suit however revealed that he signed the said processes as Paul Akhere Eromomene.

He submitted that there is nowhere in the pleadings and evidence of the 3rd defendant where he attempted to reconcile both names. He said that the 2nd defendant cast some aspersion on the purported denial by the 3rd defendant of his name when he told the Court under cross-examination that he knows Paul Akhere Eromomene, the 3rd defendant very well for over thirty five years and that the full name of the 3rd defendant is Paul Akhere Eromomene.

He submitted that the documents, i.e., General Certificate of Education, offer of Provisional Admission letter and Bachelor of Science degree of the Rivers State University of Science and Technology, attached to the 3rd defendant's motion dated the 30th of January 2020, are fake as the 3rd defendant's name therein, particularly his surname, is different from the one contained in his Statement on Oath of 23rd of April 2014 and the affidavit of 31st January 2020 attached to the motion for regularisation of his name dated the 30th of January 2020.

He submitted that in the 3rd defendant's Statement on Oath of 23/4/2014, the name 'Eromomene' is contained therein as against the name 'Eronmene', which is contained in his academic credentials domiciled in Court's file. Furthermore, the affidavit in support of 3rd defendant's motion dated the 30th of January 2020 but filed on the 31st of January 2020, contains the name 'Eromene' as against the name 'Eronmene' contained in his academic credentials in the Court's file. Consequently he posited that the 3rd defendant bears three distinct surnames; (a) Eromomene (b) Eronmene and (c) Eromene.

He submitted that the discrepancies in the 3rd defendant's surname in the Statement on Oath of 23rd April 2014 and affidavit of 31st of January 2020 which the 3rd defendant signed on the one hand and the name on his credentials on the other hand, remain un-explained and this puts a serious question mark on the actual identity of the 3rd defendant and by extension, the genuineness of his title documents in respect of the land in dispute.

He therefore submitted that although the aforesaid academic credentials of the 3rd defendant were not tendered in evidence, this Honourable Court has the power to look at documents in its case file and rely on them during judgment. He referred to the case of ***Uzodinma V Izunaso & Ors (2012) 211 LRCN page 153 at 200 AF*** where the Supreme Court held as follows:

"It is settled that the Court is at liberty to look at and utilize a document in its case file while writing its Judgment or Ruling despite the fact that the document was not tendered and

admitted as an exhibit at the trial. The purpose for the principle is that the Court is designed to do substantial justice between the parties in the resolution of the issues in controversy between them".

Counsel submitted that the names on Exhibits "A", "B" and "C" do not correspond with the 3rd defendant's surname on his Statement on Oath as well as exhibits "D" and "E". He posited that the 2nd defendant categorically told the Court under cross-examination that he signed as a witness in the land transaction between Monday Raphael Oziegbe and Mr. Paul Akhere Eromomene.

He concluded that from the foregoing, the real name of the 3rd defendant is Paul Akhere Eromomene and not Peter Odion Eromomene, particularly in view of Exhibits "D" and "F" where the 3rd defendant stated on oath as follows:

"I Paul Akhere Eromomene, I am the 3rd defendant in this suit, I have the consent and authority of the 1st and 2nd defendants/applicants to depose to this affidavit…"

He submitted that the 3rd defendant cannot simultaneously bear the name 'Paul Akhere Eromomene' on the one hand and the name 'Peter Odion Eromene' on the other hand. He said that this is in view of Exhibits "D" and "F" and the fact that a party cannot approbate and reprobate at the same time. See the case of ***Jubok International Ltd V Diamond Bank PLC (2015) WRN page 1 at p. 60 lines. 30 – 40***.

He submitted that documents tendered in Court must complement the oral evidence of a party in proof of a fact in issue. On relationship between oral and documentary evidence, see the case of ***Bunge V Governor of Rivers State (2006) 10 M.J.S.C. page 136 at P. 184 paras. D***.

Counsel submitted that where there is a conflict between oral and documentary evidence proffered by a party in proof of any fact, the Court should not attach any weight to such documents. See the cases of ***Ogunsakin V Ajidara (2010) 10 WRN page 98 at P.116 lines 40 – 45. See also Trade Bank PLC V Dele Morenikeji (Nig) Ltd (2005) 6 NWLR Part 921, Page 309 at 315.***

He submitted that a careful perusal of Exhibits "A", "B" and "C", reveals that they do not complement other documents before Court and no amount of evidence can distort the clear and unambiguous intendment of the said documents. He referred to the case of ***Ogundele V Agiri (2010) 9 WRN Page 1 at P. 22 lines 20 – 30***, where the Supreme Court held as follows:

"Documents when tendered and admitted in Court are words uttered and do not speak for themselves. They are more reliable and authentic than words from the vocal cord of man as they are neither transient nor subject to distortion and misinterpretation but remain permanent and indelible through the ages".

He further submitted that documentary evidence could be used as a hanger to test the veracity of oral testimonies. See the case of ***Bunge V Governor of Rivers State (2006) 10 M.J.S.C. page 136 at P. 184 para. D.***

He therefore submitted that since Exhibits "A", "B" and "C" are in conflict with other documents in Court including the 3rd defendant's Statement on Oath, Exhibits "D" and "F" as well as his academic credentials, they should be discountenanced by this Honourable Court.

He therefore submitted that arising from the defendants' contradictory, unreliable and incredible evidence, issue two should be also resolved in the affirmative.

Learned counsel also responded to the submission of defendants' counsel. In his response, he submitted that the CW2 never informed Court that the claimant performed his father's final burial rites sometime in 2010 as submitted by the defendants' counsel, as no such evidence is contained in the CW2's Statement on Oath of 20th of January 2014. Rather, he said that the CW2 categorically told Court under cross-examination that he could not remember when the claimant performed his father's burial. He said that he further told the Court under cross-examination that he could not also remember the date and year the claimant performed

his father's burial but that the said burial was performed when his own father was the head of the community. He said that there is no evidence before the Court to establish when the CW2's father was the head of the Community as he was not cross-examined on it. Furthermore, he said that the CW3 told the Court under cross-examination that he does not know when his father, i.e. the claimant performed the final burial rites of his (claimant) father.

He therefore submitted that the issue of contradiction raised by the defendants' counsel on the date of the aforesaid burial performed by the claimant, does not actually exist. He said that the CW1 did not also mention any date to suggest when the claimant performed the final burial rites of his deceased father. He said that the defendants' Counsel is only trying to mislead the Court in that regard and cited the case of ***Adams V Umar (2009) 2 WRN page 81, P. 146 lines 20 – 25*** on the role of Counsel in the temple of Justice.

He submitted that the evidence of the DWI is fatal to the case of the 3rd defendant. That the DWI told the Court under cross-examination that the land in dispute forms part of a large expanse of land deforested by the claimant's grandfather in the seventeenth century and that Pa Ogbebor, claimant's grandfather inherited his father's property upon his demise. He submitted that if the land in dispute was deforested by the claimant's forebear as confirmed by the DWI, the 3rd defendant's witness, how did the 2nd defendant's forebear come into possession of the land in dispute to enhance the purported transfer of part of the disputed land to the 3rd defendant without any evidence of alienation by the claimant's forebear or the claimant himself?

He further submitted that this missing gap remains un-explained and therefore renders the defendants' case comatose. On the duty of a party relying on traditional evidence, he cited the case of ***Obineche V Akusobi (2010) 38 WRN page 117 at P. 138 line 45*** and on when the witness of a party gives evidence against the interest of the said party, he cited the case of ***Odi V Iyala (2004) 8 N.W.L.R, part 875 page 285.***

Furthermore, he said that the DWI told the Court under cross-examination that the gift of the land in dispute was made by the claimant's grandfather, Pa Ogbebor in the year 1944 as against the defendants' consequential amended statement of defence which contains the year 1947 when the gift was purportedly made by claimant's grandfather. He submitted that where evidence led in Court by a party contradicts his pleadings, it renders the entire case of the party, not only contradictory but highly unreliable. See the case of ***Fatoba V Ogundahunsi (2003) 14 NWLR part 840, page 323 at P.347 paras. D – F.***

Counsel submitted that the DW1 is not a witness of truth. That while he told the Court that he met Rev. Ugege's father farming on the land in dispute in 1944 and that the said fact is contained in his statement on Oath, a perusal of the DWI's Statement on Oath of 5th April 2017, reveals that no such evidence is contained therein.

He submitted that although a party may not be in physical possession of a parcel of land as in the instant case of the claimant, he can be in possession through a third party. See the case of ***Adewole V Dada (2003) 104 LRCN, page 1 at 4.***

He submitted that from the totality of evidence before the Court, the claimant has a better title to the land in dispute having proved an unbroken chain of succession right from the period of deforestation by his forebear to when he inherited same in 1966. He submitted that where two competing parties claim to be in possession of the land in dispute, the law ascribes possession to the one with the better title. See ***Ogbu V Wokoma (2005) 4 FWLR part 292, page 2123 at P.2146, paras. C – D.***

He submitted that affixing a sign post on the land that belongs to some other person is not an act of possession but an act of trespass. See the case of ***Chukwuna V Ifaloye (2002) FWLR, part 115, page 778 at 780.***

In conclusion, he submitted that since the claimant has established his case on the preponderance of evidence, judgment should be given in his favour as per his reliefs and the counter-claim of the 3rd defendant (sic) should be dismissed with substantial cost.

In his final written address, the learned counsel for the Defendants, ***J.E.Enaholo Esq.*** formulated two issues for determination as follows:

1. WHETHER THE CLAIMANT HAS SUCCESSFULLY PROVED HIS ROOT OF TITLE IN THIS CLAIM AS REQUIRED BY LAW TO ENTITLE HIM TO THE JUDGMENT OF THIS HONOURABLE COURT? AND

2. WHETHER CONSIDERING THE FRONTLOADED EVIDENCE, DOCUMENTS, THE ORAL TESTIMONIES OF THE CLAIMANT, THE DEFENDANTS AND THEIR WITNESSES EVIDENCE ON OAT, THE CLAIMANT CAN STILL BE SAID TO HAVE INHERITED PART OF THE LAND NOW IN DISPUTE TO BE ENTITLED TO THE JUDGMENT OF THIS HONOURABLE COURT?

ISSUE 1:

WHETHER THE CLAIMANT HAS SUCCESSFULLY PROVED HIS ROOT OF TITLE IN THIS CLAIM AS REQUIRED BY LAW TO ENTITLE HIM TO THE JUDGMENT OF THIS HONOURABLE COURT?

Arguing issue 1, the learned counsel submitted that the Claimant has failed to prove his claim for a declaration of title and injunction to the land against the three Defendants jointly and severally on the preponderance of available evidence and the required balance of probability as required by law. See the cases of – ***THOMAS NRUAMAH & ORS VS. REUBEN EBUZOEME & ORS (2013) VOL. 221 LRCN (PT 1) PG. 221 AT PG. 225 RATIO 2 AND EYO VS. ONUOHA & ANOR (2011) VOL. 195 LRCN PG 38 AT 44 RATIO 2.***

He submitted that it is trite law that for a Claimant to succeed in a civil matter especially a claim for declaration of title in Nigeria, the Claimant must be able to lead and rely on cogent, strong and credible evidence which must be accepted after being weighed and tested by the Court and which evidence must be strong, un-contradicted and uncontroverted in any form. See ***EYO VS. ONUOHA (SUPRA) AT PG. 44 RATIO 1***.

He submitted that for a Claimant in a claim for a declaration of title to succeed, he must through his own evidence and that of his witnesses be able to prove one out of the five required ways/methods of proving ownership/title to land known to our body law. See the following cases – ***MATTHEW O. KUMAPAYI VS. JOSEPH O. SOLUGE (2013) 32 WRN PG. 173 AT PG. 175 – 176 RATIO 1, NRUAMAH & ORS VS. REUBEN EBUZOEME & ORS (SUPRA) AT PG. 224-225 RATIO 1, AYANWALE VS. ODUSAMI (2012) VOL. 204 LRCN PG. 198 AT PG. 203-204 RATIO***

He enumerated the five methods to be as follows:

- ***i. By traditional evidence***
- ***ii. By production of documents of title which are duly authenticated***
- ***iii. By act of selling, leasing, renting out all or part of the land or farming on it or on a portion of it.***
- ***iv. By acts of long possession and enjoyment of land and***
- ***v. By proof of possession of connected or and 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***. Also see – ***UDENZE VS. NWOSU (2008) 154 LRCN PG. 110 AT PG. 121 RATIO 15.***

He submitted that it is the Claimant's claim in his frontloaded evidence and during his oral testimony and cross-examination on oath that he inherited the land in dispute from his father, late Pa. Okosun Ogbebor after tracing the root of title of the land from late Pa. Ekah Ojeba who according to him deforested the land in dispute and was subsequently inherited by

late Pa. Ogbebor Ekah his grandfather before his father inherited same and which he claimed finally devolved on him upon the death of his father sometime in the year, 1966 when according to him he also performed the final burial rites of his father which entitled him to inherit his father's property including this land in dispute.

He said that the Claimant in proving his claim of title tried to rely on the traditional/customary inheritance by hinging his root of title on traditional history.

He submitted that the Claimant failed to lead cogent, strong and coherent evidence in proving his title over the land. He said that according to him, he inherited the land upon the death of his father in the year, 1966 and after performing the final burial ceremony in the same year. He said that this piece of evidence was contradicted by two of his witnesses i.e. CW2 and CW3 his own son. He alleged that CW2 testified during cross-examination that the Claimant performed his father's final burial ceremony when his own father (late Pa. Eranga) was the Odionwele of Uzegua Quarter, Efandion, Uromi sometime in the year, 2010, he said that he also told the Court that he knew the Claimant's kinsmen that showed the land to the Claimant whose name he gave to be one Okosun and three others, he further informed the Court that he was born sometime in the year, 1972, while the CW3 Omokhegbele Okosun (Claimant's son) informed the Court during cross-examination that he was one of the Claimant's children that was shown the land by their kinsmen amongst whom is S. A. Okosun while claiming not to know the others. Counsel submitted that the evidence of the Claimant and two of his witness contradict each other and this goes a long way to affect the root of his title to the claim. See ***AKANDE VS. OYEWOLE (2003) 6 WRN PG. 36 AT PG. 40-41 & DAIRO VS. STATE (2018) 7 NWLR PT. 1619 PG. 399 AT PG. 406 RATIO 11***.

He posited that the above evidence of CW2 and CW3 strongly corroborated the evidence of both the 2nd Defendant and the DW1 which evidence is that the Claimant's father died in the year, 1992 while the final burial rites was performed in the year, 2010.

Furthermore, he posited that the DW1 informed the Court in both his frontloaded evidence and under cross-examination that the land in dispute was not the land he showed the Claimant; for according to him, the land in dispute has already been freely and customarily granted to both Ugege Ujadughele and Aigbonoluorianosen in the year, 1947 by late Pa. Ogbebor Ekah (Claimant's grandfather). He further informed the Court that the only free land as at the time the Claimant's father was alive and which he showed to the Claimant upon the death of the Claimant's father is the one behind Atani Primary School, known as Ojia Ikpovu while the one in dispute is known as Ogo Akpogho which piece of evidence he said was never debunked or contradicted in any material way. Hence he urged the Court to resolve the contradiction in favour of the Defendant.

Counsel submitted that what entitled a Claimant in Esan land to inherit his late father's property who died intestate in accordance with the tradition and hinging his root of title on traditional inheritance is the successful performance of his late father's final burial rites and which only entitles him to his father's property. He said that in this case, it is common ground that the Claimant actually performed his father's burial rites but the disagreement is on the date of the burial which according to the Claimant was sometime in the 1966 while his witnesses CW1, CW2, CW3, 2nd Defendant and DW1 stated to be sometime in the year, 2010 i.e. 44 years apart. He therefore submitted that the evidence of the Claimant and his witnesses have greatly discredited his claim of ownership to the land in dispute. See the case of ***OLODO VS. JOSIAH (2011) VOL. 190 LRCN PG. 34 AT PG. 42 RATIO 6***.

He posited that the evidence of the Claimant and his witnesses are riddled with inconsistency and contradiction and should not be believed and/or acted upon. See ***BUHARI VS. INDEPENDENT NATIONAL ELECTORAL COMMISSION (2009) 7 WRN PG. 1 AT PG. 176, 45-5***. He submitted in this regard, that the Court cannot pick and choose which

evidence to believe. See ***MINI LODGE LTD VS. NGEI (2010) WRN PG. 58 AT PG. 78, 25-40.***

He posited that it was also the evidence of the Claimant, CW2 and CW3 that the Claimant's father, late Pa. Okosun Ogbebor never during his life time disputed title over the land in dispute with anybody. That it is the un-contradicted evidence of the Defendants especially the 2nd Defendant and as shown/reflected copiously in their joint statement of defence and statement on oath, that part of the land now in dispute measuring approximately 300ft x 300ft was sold by his uncle Raphael Monday Oziegbe to the 3rd Defendant.

That the 2nd Defendant signed as a witness in Exhibit "B" and he informed the Court that the 300ft x 300ft forms part of a vast land deforested by late Pa. Odeva and was inherited by late Pa. Ijiekhuemen and which forms part of a larger land which was later inherited by Raphael Monday Oziegbe from his father late Mr. Raphael Oziegbe who died in the year, 1987. That further in his statement on oath, he stated that Raphael Oziegbe sold part of the vast land given to him by his father, Pa. Oziegbe Ijiekhuemen, measuring approximately 200ft x 300ft to Dr. Stephen E. K. Okiye without challenge from anybody and that until date the land is being possessed and used by Dr. Stephen E. K. Okiye while leaving the remaining 300ft x 300ft for his eldest son upon his death in the year, 1987 and which was sold and transferred by Raphael Monday Oziegbe which piece of evidence was never challenged, controverted and denied by the Claimant.

He said that it was also the evidence of the DW1, Felix Okhomenbhelo Omenlo (Cousin to the Claimant) that he knew that, that part of the land belong to the Ugege family and Sunday Aigbonoluorianosen's family by virtue of a free customary gift from his grandfather, late Pa. Ogbebor Ekah made sometimes in the year, 1947 and that Pa. Ogbebor Ekah died sometime in March, 1966 i.e. 19 years after the gift and that it was because the Claimant's father was aware of the customary free gift/grant he never disputed title over the land with all the beneficiaries whose children also inherited and sold to the 3rd Defendant. He said that the D.W.1 further informed the Court that he signed the deeds of transfer as a witness to both the Ugege's and Aigbonoluorianosen's family with the 3rd Defendant and which evidence was not denied, controverted nor challenged by the Claimant. See the cases of – ***HILARY FARMS LTD VS. M/V "MAHTRA" (SISTER VESSEL TO M/V "KADRINA" (2007) VOL. 153, LRCN PG. 34 AT PG. 37 RATIO 5, AND EKENE DILI CHUKWU VS. DISU (2001) VOL. 1 EDO/HCLR PG. 12 AT PG. 15-16 RATIO 3***.

He therefore urged the Court to declare that the Claimant has failed to cogently prove his root of title.

He pointed out that although the Claimant alleged that he farmed on the land after inheriting it, during cross-examination he admitted that the dimension of the land was also supplied to him by his children which shows that up till now, he does not know the extent of the land in dispute. He submitted that it is settled law that a Claimant in a claim for declaration of title must on his own evidence, prove his root of title rather than rely on the weakness of the defence if any. See ***UDENZE & ORS VS NWOSU (SUPRA) AT PG. 120 & 121 RATIO 10 & 14***.

Again, he posited that the Claimant in proof of his title, informed the Court that the land shares boundaries with one Balogun and Mr Stephen Okosun, but the Claimant failed to call any of the boundary neighbours to prove his claim neither did he call any of his kinsmen who they claimed showed them the land and the boundary extent. See ***UDENZE & ORS VS. NWOSU (SUPRA) AT PG. 118 & 122 RATIO 6 & 7.***

Furthermore, he said that the Claimant and his witnesses informed the Court that the Claimant after farming on the land for some time later commissioned, Thomas Okoduwa, Alfred Okosun, Ewan and Mrs. Okoduwa to farm on the land but he failed to call any of them to prove their act of possession and usage of the land in dispute despite the fact that he admitted that they are

still alive. See – ***NEW BREED & ORS VS. ERHOMOSELE (2006) VOL. 140 LRCN PG. 2064 AT PG. 2067 – 2068 RATIO 2 JJ-F***.

He submitted that for a Claimant to be said to have been in possession or still be in possession and usage of the land in dispute he must be able to lead evidence to show that he was in physical possession and usage of the land or part of the land in dispute either personally or through a second or third party who he may have authorized to do so. See ***AWODO VS. AJAGBE (2015) 242 LRCN PG. 99 AT PG. 110 AT 137 FP, ADAH VS. UBANDAWAKI (2015) 1 M.J.S.C. PG. 36 AT PG. 54 & MORENIKEJI VS. ADEGBOSON (2003) 8 NWLR PT. 823 PG. 612 AT PG. 663.***

He therefore urged the Court to hold that the Claimant has failed to prove an unbroken root of title to warrant the judgment of this Court in his favour.

ISSUE TWO:

WHETHER CONSIDERING THE FRONTLOADED EVIDENCE, DOCUMENTS, THE ORAL TESTIMONIES OF THE CLAIMANT, THE DEFENDANTS AND THEIR WITNESSES EVIDENCE ON OATH, THE CLAIMANT CAN STILL BE SAID TO HAVE INHERITED PART OF THE LAND NOW IN DISPUTE TO BE ENTITLED TO THE JUDGMENT OF THIS HONOURABLE COURT?

Arguing this issue, learned counsel submitted that the Claimant has failed through his frontloaded documents, evidence on oath and that of his witnesses to establish the extent of the land that was actually available for the Claimant to inherit at the time he performed his father's final burial rites in the year, 2010 as now confirmed by CW2, CW3, 2nd Defendant and DW1.

He submitted that the Claimant failed to properly prove his root of traditional inheritance due to the breakage in the chain occasioned by the customary free gift/grant made by his grandfather, late Pa. Ogbebor Ekah in the year, 1947 and which customary grant/gift deprived his father Okosun Ogbebor of the right of inheritance.

He said that the sales of part of the land already bequeathed to the family of Ugege Ujadughele and Aigbonoluorianosen by late Pa. Ogbebor Ekah and which their children i.e Rev. Michael Ugege and his siblings and Sunday Aigbonoluorianosen after inheriting same was fully confirmed by the Claimant's, witnesses, the 2nd Defendant, DW1 and DW2 who all claimed to be aware of the sales of the entire land to the 3rd Defendant and that it was the DW1 who signed as witness to both the Ugege and Aigbonoluorianosen's family being their inheritance and which position was further corroborated by the DW1. See ***ORUNENGIMO VS. EGEBE (2008) VOL. 154 LRCN PF. 40 AT PG. 43-44 RATIO 3.***

He submitted that the traditional history of inheritance being relied upon by the Claimant stopped upon the customary grant/gift by late Pa. Ogbebor Ekah sometimes in the year, 1947. See ***KUMAPAYI VS. SOLUGE (2013) 32 WRN PG. 173 AT PG. 176 RATIO 2***. He said that the alleged gift vitiated the Claimant's father's right of inheritance hence he never disputed title over the land with the Ugege and Aigbonoluorianosen's families during his life time and he urged the Court to so hold. See ***DAGACI OF DERE VS. DAGACI OF EBWA (2006) VOL. 140 LRCN PG. 2114 AT PG. 2120-2021 RATIO 9 & 10 Z – P, ORUNENGIMO VS. EGEBE (2008) VOL. 154 LRCN PG. 40 AT PG. 43-44 RATIO 3 AND OYADARE VS. KEJI & ANOR (2005) VOL. 123 LRCN PG. 17 AT PG. 20 RATIO 7 PARAGRAPHS A – F***.

Counsel pointed out that the Claimant's statement of claim stated that the 3rd Defendant derived title from the 1st and 2nd Defendants which information was allegedly related to the Claimant by the CW2 but during cross-examination the Claimant informed the Court that the 1st and 2nd Defendants did not sell any part of the land in dispute to the 3rd Defendant. He also allegedly informed the Court that he does not know whether the 1st Defendant knows the land in dispute. He said that surprisingly, the CW2 informed the Court under cross-examination

that he is aware that the Ugege and Aigbonoluorianosen family sold the land to the 3rd Defendant.

Again he pointed out that the Claimant in paragraphs 29, 30 & 31 of his statement on oath informed the Court that Rev. Michael Ugege (deceased) informed him that he sold part of the land to the 3rd Defendant being his inheritance because the Claimant's grandfather made a customary free gift of same to his father, late Pa. Ugege Ujadughale. He submitted that this position and the evidence of the DW1 shows that the traditional history been relied upon by the Claimant is inconclusive as a result of the customary gift by his grandfather. See ***TAIWO & ORS VS. OGUNDELE & ORS (2012) VOL. 208 LRCN PG. 1 AT PG. 7 RATIO 4***.

Counsel submitted that considering the above position as to the sale of the land to the 3rd Defendant, the question is: ***"Why did the Claimant decide to sue the 1st and 2nd Defendants to Court even when he knew that they never sold the land or any part of the land to the 3rd Defendant?*** He therefore urged the Court to strike out the claim against the 1st and 2nd Defendants with substantial cost.

Counsel posited that although the 1st – 3rd Defendants did not file any Counter-Claim, they filed their joint statement of defence and statement on oath while the 3rd Defendant called two witnesses i.e. DW1 and DW2 i.e. Mr. Felix Okhomebhelo Omenlo (cousin to the Claimant) and Mr. Alfred Okosun Ewan and also attached and tendered three separate deeds of transfer covering the land in dispute, between himself, the Ugege family, Sunday Aigbonoluorianosen and Raphael Monday Oziegbe.

He said that the Exhibits were admitted to have been signed for the sellers as witnesses by the 2nd Defendant who signed for his uncle, Mr. Raphael Monday Oziegbe and Mr. Felix Okhomebhelo Omenlo who signed for both the Ugege family and Sunday Aigbonoluorianosen and which agreement are less than 20 years and should be accepted as granting possessory right to the 3rd Defendant. See ***Section 123 EVIDENCE ACT, 2011 & AYANWALE VS. ODUSAMI (2012) VOL. 204 LRCN PG. 198 AT PG. 204-205 RATIO 7***.

He posited that it was the evidence of both the 2nd Defendant and DW2 i.e Mr. Alfred Okosun Ewan that they farmed on the land now in dispute at various times with the consent and authority of the 3rd Defendant being the bona fide owner. That it was also the testimony of the 2nd Defendant that his own uncle, Mr Raphael Monday Oziegbe sold part of this land i.e 300ft x 300ft to the 3rd Defendant which evidence was not properly contradicted, challenged or controverted. See ***HILARY FARMS LTD VS. M/V "MAHTRA" & (2007) LRCN PG 34 AT PG. 37 RATIO 5 INCAR (NIG) LTD VS. ADEGBOYE (1985) 2 NWLR (PT 8) 353 AT PG. 36 F.G.***

He said that the 2nd Defendant further informed the Court that before his uncle finally sold the land to the 3rd Defendant that his uncle made him the caretaker over the land and he farmed on the land for many years unchallenged before he finally sold it to the 3rd Defendant who after being led into physical possession equally made him the caretaker over the entire land and nobody challenged him while he was farming on the land in dispute in company of Mrs. Obiyan Maria, Mrs. Eromomene and others until the year, 2013 when the Claimant trespassed unto the land.

Counsel submitted that the affixing of Exhibit A1 by himself (sic) and the 3rd Defendant was confirmed by the CW1 and CW2 which goes to show that the Claimant has never been in possession of the land but shows and confirmed that the 3rd Defendant has been in possession and usage of the land earlier by himself, and later through the 2nd Defendant and others. On acts of possession, he referred the Court to ***section 143 OF THE EVIDENCE ACT, 2011*** and the case of ***AKINBADE VS. BABATUNDE (2018) 7 NWLR PG. 366 AT 371 -371 RATIO 5 & 6.***

He posited that it has been established that the 3rd Defendant has been in possession of the land through a valid purchase from three different owners i.e. Rev. Michael Ugege and his

brothers, Mr. Sunday Aigbonoluorianosen and Mr. Raphael Monday Oziegbe as per Exhibits A, B and C. He said that although the said Exhibits ought to be registered being registrable instruments however they possess an equitable power and thereby conferred equitable right/interest on the 3rd Defendant over the land in dispute. See ***ZACCALA VS. EDOSA (2018) 6 NWLR PG. 528 AT PG. 532 RATIO 2, GBADAMOSI VS. AKINLOYE & ORS (2013) VOL. 223 (PT 2) PG. 1 AT PG. 6 RATIO 6 & NSIEGBE VS. MGBEMENA (2006) VOL. 152 LRCN PG. 82 AT PG. 86 RATIO 5***.

Finally he submitted that it is settled law that a Claimant for a declaration of title can only succeed on the strength of his claim and total credible evidence adduced and cannot rely and succeed on the weakness of the Defendants' defence. See ***AYANWALE VS. ODUSAMI (SUPRA) AT PG. 203 RATIO 3 AND NRUAMAH & ORS VS. EBUZOEME & ORS (2013) VOL. 221 LRCN (PT 1) PG. 221 AT PG. 225 RATIO 2 AND AKINBADE VS. BABATUNDE (SUPRA) 7 AT PG. 373 RATIO 8*** where the Court held thus:

"Declaratory reliefs are never granted as a matter of course. The reliefs are obtained on the basis of very strong and cogent case contained in the Claimant's pleading and evidence led in support. It is for the Plaintiff to satisfy the Court that under all the circumstances of the case he is fully entitled the discretionary reliefs he urges in his favour. The Claimant succeeds on the strength of his case alone and never by virtue of the weakness of the Defendants".

He therefore urged the Court to dismiss the entire claim of the Claimant with substantive costs in favour of the Defendants.

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 addresses of the respective Counsels to the parties.

Upon a careful examination of the Issues formulated by learned counsel for the parties, I observed that the Defendants did not file any Counter-Claim in this suit so I am of the view that the sole issue for determination in this suit is: ***Whether the Claimant has proved his title to the land in dispute on the balance of probabilities?***

I will now proceed to resolve the issue.

In a claim for a declaration of title to land, the burden is on the Claimant to satisfy the Court that he is are 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, from the evidence led, the Claimant appears to be relying on the first, third, and the fifth means of proof. To wit: proof by traditional evidence; by acts of ownership; and by acts of long possession and enjoyment of the land.

The Claimant's traditional evidence of title is that that he inherited the land in dispute from his deceased father, Pa Okosun Ogbebor after performing the final burial rites of Pa. Ogbebor in accordance with Esan Native Law and Custom of Efandion-Uromi. He traced the traditional history of the land to sometime in the 17th century when his great grandfather, late Pa Ekah allegedly deforested a vast expanse of land, part of which is now in dispute. According to him, after deforestation, the said Pa. Ekah farmed extensively on the vast expanse of land, until his death whereupon the claimant's grandfather, Pa. Ogbebor performed his final burial rites, inherited the vast expanse of land and continued to farm on it.

According to the claimant, after the death of his grandfather in 1936, the claimant's father, Pa Okosun Ogbebor allegedly inherited the said vast expanse of land, part of which is in dispute after performing the final burial rites of Pa. Ogbebor in accordance with Esan Native Law and Custom of Efandion-Uromi. The Claimant told the Court that his father farmed extensively on the said vast expanse of land unchallenged until his death in the year 1966 whereupon, he inherited same after performing his final burial rites, the same year and continued to farm on it until he fell sick and he had to give a part of the land to some other persons to be farming on it.

In his evidence, the claimant testified that he shares a common boundary with one Stephen Okoyomon Okosun, now deceased and one Anslem Balogun. He called one Friday Ehiamentalor (C.W.1) who told the Court that he bought his land from late Stephen Okoyomon Okosun, the Claimant's boundary neighbour and that he now shares a common boundary with the Claimant. The Claimant also called one Saturday Eraga who testified as CW2 and informed the Court that he is the caretaker of Anslem Balogun's land which shares a common boundary with the land in dispute.

It is the settled law that in a claim for declaration of title to land, the Claimant has the burden to establish his claim by credible evidence. The first duty on the Claimant in a land suit is to lead evidence that will establish the identity of the land in dispute. Even where he has traced his genealogy accurately and such genealogy is not linked to a definite parcel of land, which is the subject of the claim, there will be no parcel of land upon which the declaration can be tied to, as the declaration cannot be made in vacuum. In the absence of proof of identity of the land to which the declaration can be related, the declaration cannot be made. See ***Awote v. Owodunni (No. 2) (1987) 2 NWLR (pt. 964) p. 337 and Nwokidu v. Okanu (2010) 3 NWLR (pt. 1181) p. 362***.

Furthermore, proof of identity of the land in dispute may be done either by oral description of the land through the viva-voce evidence of witnesses especially boundary men or by tendering in evidence a survey plan of the disputed land or by both methods. ***REGISTERED TRUSTEES METHODIST CHURCH NIG & ANOR V. ADENIJI & ORS (2012) LPELR-19899(CA).*** See also the case of ***Awote & Ors. v. Owodunni & Anor. (1987) 2 NWLR (pt. 57) 366 at 371.***

In the instant case, the Claimant called some of his boundary men in a bid to prove the identity of the land in dispute. I am satisfied that the Claimant has sufficiently identified the land in dispute through the evidence of his witnesses particularly the boundary men who testified as C.W 1 and 2.

As a matter of fact, from the evidence adduced by both parties, it is common ground that some part of the land in dispute forms part of a large expanse of land originally deforested by the claimant's great grandfather, late Pa Ekah. Part of the dispute to be determined in this suit is whether the Claimant's grandfather, Pa Okosun Ogbebor who inherited the said vast expanse of land from the Claimant's great grandfather, actually gave the land in dispute or any

part thereof as a gift to Rev. Ugege's father and other persons from whom the 3rd Defendant acquired his alleged title to some part of the parcels of land now in dispute. This is part of the Defendants defence to this action.

As part of their defence, the Defendants have maintained that although part of the land in dispute forms part of a large expanse of land originally deforested by the claimant's great grandfather, subsequently, some part of the land was freely and customarily granted to both Ugege Ujadughele and Aigbonoluorianosen in the year, 1947 by late Pa. Ogbebor Ekah the Claimant's grandfather. According to them, those portions could not have devolved on the Claimant because his own father never inherited them from the Claimant's grandfather.

Although the Defendants did not file a counterclaim in this suit, in their defence, the 3rd Defendant is claiming ownership of the land in dispute vide purchase from some vendors whose roots of title are inter alia, based on the alleged customarily gift inter-vivos of the land to both Ugege Ujadughele and Aigbonoluorianosen in the year, 1947 by late Pa. Ogbebor Ekah the Claimant's grandfather. I will first deal with the aspect of the case relating to the alleged customarily gift inter-vivos.

A gift inter-vivos is an act whereby something is voluntarily transferred from the true possessor to another person, with the full intention that the thing shall not return to the donor but that the receiver should retain the thing entirely as his own without restoring it to the giver. Where a gift of land is made inter-vivos, even after the death of the donor, the land remains the exclusive property of the donee. See: - ***A. J. Oguejiofor vs. Pastor O. Osaka & 5 Others (2000) 3 SCNJ Page 1.***

The salient issue to address at this stage is to determine whether it has been established that there was in fact a gift inter-vivos of part of the land in dispute to the alleged donees.
The gift of land under customary law is the gratuitous transfer and handing over of land by the owner (donor) to the donee in the presence of witnesses and acceptance in the presence of witnesses with much publicity. See ***Bankole V. Tapo (1961) ALL NLR Page 140, Hammod V. UAC Ltd (1935) 2 WACA, page 385- Kwakuwah V. Nayenna (1938) 4 WACA 165. MR. COCOA ODIEDI v. MR. VOTE ONORIKUTA & ORS (2020) LPELR-51255(CA)***

It is settled law that to prove a gift of land inter vivos, there must be evidence of the actual handing over of the land and acceptance thereof in the presence of witnesses. The ***locus classicus*** of this principle is the old case of ***Ayinke v. Ibidunni (1959) 4 FSC 280 at 282*** where ***Ademola, C.J.F***., observed that disposition of properties could be made under native law and custom by a gift followed by a transfer of the property, or a declaration by a man on his death bed in the presence of witnesses.

I must reiterate that although the Defendants did not put up a counter claim in this suit, the burden is on them to prove that the Claimant's grandfather made a gift inter-vivos of part of the property in dispute to the alleged donees. It is trite law that he who alleges must prove his allegation. The burden is not on the Claimant to disprove the gift inter vivos. In the case of ***MADAM ALICE ORIDO v. THEOPHILUS AKINLOLU (2012) LPELR-7887(CA)*** with similar facts, the Court of Appeal restated the position thus:

"At any rate there was no burden on them legal or evidential to prove that there was no gift inter vivos of the land in dispute. The burden remained throughout on the respondent. In Lawson v. Ajibulu (supra) @ P.41 Belgore JSC observed:-

"It is too late in our law to disregard onus probandi. The person that asserts must prove and the fact that the defendant never proves or even remains silent will not discharge the burden on the plaintiff ..."

Continuing their comments in the case of ***MADAM ALICE ORIDO v. THEOPHILUS AKINLOLU*** (supra) the Court of Appeal further asserted thus:

"…I have no difficulty whatever in holding that the lower Court erred in shifting the burden of disproving the gift inter vivos to the appellant; and that it resulted in grave miscarriage of justice.

The respondent was clearly unable to prove the title of his father's vendor. He was unable to prove that the land in dispute was given to Gabriel Osuntuyi as an outright gift by his father Benjamin. What this means is that on the death of Benjamin, the land became the family property of all the children of Benjamin. The fact that Gabriel was farming on the land as testified to by PW1 and PW2 even after their father's death does not make him the owner of the land and does not give him the right to dispose of the land as his personal property. The fact also that the respondent adduced evidence of sale of other adjoining land by Gabriel Osuntuyi through the tendering of exhibits A1 - A6 cannot by that alone give him title as he has not been able to show valid title by gift inter vivos."

Coming to the instant case, I observed that although the Defendants pleaded the fact of customary gift, at the trial the evidence adduced was rather scanty. There was no evidence of the gratuitous transfer and handing over of land by late Pa. Ogbebor Ekah, the Claimant's grandfather to both Ugege Ujadughele and Aigbonoluorianosen in the presence of witnesses. The bare assertion of the Defendant's witnesses that there was such a gift is not sufficient proof of same.

Furthermore, whereas in paragraph 17 of the Defendants' consequentially amended statement of defence, they categorically stated that the gift of the land was made in the year 1947, under cross-examination, the D.W.1 informed the Court that the gift was made by the Claimant's grandfather as far back as the year 1944. It is trite law that where a party gives evidence at variance with his pleadings, such evidence goes to no issue and the court is entitled to discountenance such evidence. See ***Makinde v Akinwale (2000) FWLR pt 25 page 1562. Adimora v. Ajufo (1988) 3 NWLR pt 80 page 7; CHIEF A. C. NWABUDE & ANOR v. AUGUSTINE UGODU & ORS (2011) LPELR-9173(CA).***

As I earlier postulated, the Defendants were the ones who alleged that there was a gift inter vivos from the Claimant's grandfather to certain beneficiaries and it is trite law that he who alleges must prove his allegation. From the foregoing it is evident that the Defendants have not discharged the onus on them to prove that there was a gift inter vivos from the Claimant's grandfather to the alleged beneficiaries.

The second aspect of this suit is in relation to the part of the land in dispute which the 3rd Defendant allegedly purchased from one Raphael Monday Oziegbe. Here I will commence with the evidence of the traditional history of the land that culminated in the part of the land that allegedly devolved on the said Raphael Monday Oziegbe.

It is pertinent to observe that in their pleadings, the Defendants attempted to plead some relevant facts to trace the traditional history of the land from earliest times. I will reproduce some paragraphs of their Consequentially Amended Statement of Defence as follows:

"7. The 2nd defendant denies the fact that Late Pa. Uwehenle was the first settler in Uzegua Quarters, Efandion Uromi.

(a) The 2nd Defendant states that his great, great grandfather Late Pa. Odeva was the first settler in the entire Efandion which includes Uzegua Quarters, Efandion Uromi and that was in the early 16th century.

(b) The 2nd Defendant states further that late Pa. Odeva in his life time deforested a vast expanse of land which spreads from Idumu- Obodo down to a major part of the area today known as Uzegua, and which includes part of the land now in dispute

(c) The 2nd Defendant states that the people today known as the Uzegua are natives of Idumu- Oniha Quarters, Efandion Uromi and came to settle in Uzegua after its deforestation.

(d) The 2nd Defendant states that the Idumu-Oniha people are natives and originally from Ewohimi (Okaigben) but came to settle in Efandion in the late 16th century.

8. The 2nd Defendant states that Uwehende being the leader of the Uzegua people then met his great, grandfather Pa. Odeva and was amongst the first settlers put unto part of the un-deforest land by Pa. Odeva and known today as Uzegua.

(a) The 2nd Defendant admits that late Ojeba was the father of three children namely: Ozigho, Ekah and Okonokhua.

9. The Defendants admits the averment as contained in paragraph 9 of the claimants statement of claim only to the extent that the 1st Defendant has a building along coco-nut Street but does not resides there.

10. The 2nd Defendant states that part of the land measuring 400ft x 800ft being now in dispute forms part of the land inherited by late Pa. Ijiekhuemen after the death of late Pa. Egbe, son of late Pa. Odeva which he inherited after performing the final burial rites as demanded by custom.

(a) The 2nd Defendant states that late Egbe being the eldest surviving son of late Pa. Odeva could not perform his father's final burial ceremony hence at his death late Pa. Ijiekhuemen performed the final burial rites of late Odeva and inherited him.

(b) The 2nd Defendant states that late Pa. Ijiekhuemen after inheriting continued to farm on the vast land which includes part of the land now in dispute unchallenged throughout his life time.

(c) The 2nd Defendant states that late Ijiekhuemen planted yam, cassava, maize, millet beans on the land and was being assisted by his children and labourers from Uzegua.

(d) The 2nd Defendant states that late Pa. Ijiekhuemen in his life time has many children amongst who were Oziegbe, Egbenya, Okogbo and others.

(e) The 2nd Defendant states that at the death of late Pa. Ijiekhuemen his eldest surviving son late Pa. Oziegbe performed his final burial ceremony as required by custom and inherited his late father's vast expanse of land which includes part of the 400ft x 800ft now in dispute.

(f) The 2nd Defendant states that late Pa. Oziegbe after inheriting his father's vast expanse of land continued to farm on it by planting yam, maize, cassava, beans etc unchallenged and was ably assisted by his children amongst whom were: Igene, Peter, Moses, Raphael, Anthony (2nd Defendant) Awo and a host of others.

(g) The 2nd Defendant states that due to family growth and expansion, late Oziegbe alienated and/or share a vast part of his land during his life time amongst those of his children that were already married in the year 1963.

(h) Amongst those that benefitted were Igene Oziegbe, Peter Oziegbe, Moses Oziegbe, Raphael Oziegbe and Anthony Oziegbe (2nd Defendant).

(i) The 2nd Defendant states that part of the land measuring 400ft x 800ft now in dispute forms part of the vast expanse of land late Pa. Oziegbe shared and gave to Igene and Raphael Oziegbe his first and fourth sons to settle in.

(j) The 2nd Defendant states that late Raphael Oziegbe after the Customary gift and after being led into physical possession continued to farm on the vast expanse of land unchallenged in company of his wife and children until his death in 1987.

(k) The 2nd Defendant states that his father Oziegbe Ijiekhuemen died on the 21st day of May, 1965 and Igene Oziegbe performed the final burial ceremony as required by custom and inherited his late father's remaining and unshared vast expanse of land.

(l) The 2nd Defendant states that late Raphael Oziegbe being in an undisturbed and unchallenged possession sold part of the land measuring 200ft x 300ft forming part of the entire land given to him by his late father to one Dr. Stephen E. K. Okiye who has been in an undisturbed possession of same till date.

(m)The 2nd Defendant states that Raphael Oziegbe in his life time has many children amongst whom are Monday Oziegbe, Monday Oziegbe performed his late father's burial and inherited the remaining vast expanse of land measuring approximately 300ft x 300ft which forms part of the 400ft x 800ft now in dispute.

(n) The 2nd Defendant states that Monday Oziegbe after inheriting farmed on the land before authorizing him (2nd Defendant) to continue to farm on the land on his absence as caretaker and that he continued to farm on same unchallenged.

(o) The 2nd Defendant states that he was still farming on the land when his uncle Mr. Monday Oziegbe sold the land measuring 300ft x 300ft to the 3rd Defendant hence he signed as a witness, and that the land forms part of the 400ft x 800ft being now in dispute and shall be relying on the purchase receipt in the hearing of this case.

(p) The 2nd Defendant states that the entire expanse of land his late brother, late Raphael Oziegbe acquired vide Customary Gift from their late father measures 300ft x 500ft and share common boundaries with the following: A Farm Foot Path, Mr. Igene Oziegbe, Mr. Aigbonoluorianosen and the Ugege's family."

The foregoing pleadings on the traditional history of the portion of the land which the 3rd Defendant allegedly purchased from Raphael Monday Oziegbe was a bold attempt to trace the Vendor's root of title. However in a curious twist, while adducing evidence at the trial, the Defendants did not lead an unbroken chain of evidence to establish this traditional evidence from the period of deforestation of the land.

The evidence of the 2nd Defendant in this regard is quite relevant, as he happens to be a member of the Oziegbe family. In his deposition dated the 23rd of April, 2014, the 2nd Defendant traced the root of title from his late father, Pa. Oziegbe Odeva who gave the land as a gift inter vivos to one Raphael Oziegbe. Upon the demise of Raphael Oziegbe, his son, Raphael Monday Oziegbe allegedly inherited the land and sold it to the 3rd Defendant. However, the evidence of the 2nd Defendant did not capture the origin of the land as stated in their pleadings, in relation to the period of deforestation before it came into the possession of

Pa. Oziegbe Odeva. Those facts as contained in the pleadings appear to have been abandoned by the Defendants. It is settled law that where there is failure to lead evidence in support of a pleading, the pleading is deemed abandoned. See ***Alhaji Bala & Ors. v. Mrs. Bankole (1986) 3 NWLR (Part 27) 141; B. V. Magnusson v. V. K. Koiki (1993) 12 SCNJ 114 at 124; (1993)9 NWLR (Part 317) 287; Ahmed v Registered Trustees of Archdiocese of Kaduna of the Roman Catholic Church (2019) 5 NWLR (Pt. 1665) 300, 313.***

I am of the view that the absence of the evidence of the origin of the land from the period of deforestation has created a gaping gap in the alleged root of title of the 3rd Defendant's alleged vendor to wit: Raphael Monday Oziegbe.

It is well settled that a party relying on evidence of traditional history must show who his ancestors were and how they came to own and possess the land and eventually passed it to him. See ***Oyadare V. Keji (2005) 7 NWLR (pt. 925) 571 SC;*** and ***Ojoh V. Kamalu (2005) 18 NWLR (pt. 958) 523 SC,*** where ***Niki Tobi, JSC*** stated as follows -

"The evidence required is not evidence of yesterday or a few years ago but one of many years; what the lawyers call "immemorial" evidence, which means back to ancient times. In other words, for evidence of traditional history to be acceptable, it must go back to ancient times in the sense that the evidence existed for a very long time. The evidence must have endured through generations."

Also, where a person traces the root of his title to a person or family he must establish how that person or family also came to have title vested in him or in them. See ***IBIKUNLE v LAWANI [2007] 3 NWLR [Pt. 1022] 580; OKORO v DAKOLO [2006] 14 NWLR [Pt. 1000] 401 SC; BENJAMIN- N. IRO AGBARA v DAVID UFOMADE [2009] 5 6 SC [Pt. 1] 83.***

The principles governing the assessment of evidence of traditional history were elucidated in the case of ***NWISIGWU & ORS VS. NWANIKILI (2014) LPELR-23272 (CA) pages 16-17 paras C-D per Jega JCA*** thus: - ***"Traditional evidence or history in respect of ownership of land is evidence albeit admissible hearsay as to the rights alleged to have existed beyond the time of living memory proved by members of the family or community who claimed the land subject of dispute as their own. It can equally be described as ancient history, thus, the principles of traditional history are: (a) Where the line of succession is not satisfactorily traced in an action for declaration of ownership of land or title and the line of succession has gaps and mysterious or embarrassing linkages which are not explained or established, such line of succession would be rejected; (b) Where a party pleads and traces the root of the title to a particular person or family, he must establish how that person came to the title vested in him. He cannot ignore proof of his overlord's title and rely on long possession.***"

From the foregoing, I am of the view that the Defendants clearly failed to establish the root of title of the 3rd Defendant in relation to the portion of land which he allegedly purchased from Raphael Monday Oziegbe. Their evidence in this regard was not only vague but very weak indeed. They had no clear cut explanation as to the traditional history of the land.

Juxtaposed with the evidence adduced by the Claimant in this case, I am of the view that the claimant who also relied on traditional history, led cogent evidence of how the land in dispute which formed part of the vast expanse of land was deforested by his great grandfather after which it devolved on his grandfather, then to his father, and finally to himself through inheritance. Where the claimant's evidence of traditional history is cogent, un-contradicted and conclusive, the claim is bound to succeed. See ***Aikhionbare v. Omoregie 1976 12 SC. 16, Kodilinye v. Mbanefo Odu 2 W.A.C.A. 336, and Eboha v. Anakwenza 1967 FNLR 279.***

In an attempt to disparage the Claimant's case, in his final address, the learned counsel for the Defendants seriously contended that there were some material contradictions in the evidence adduced by the Claimants in this case. According to him, in his evidence, while the Claimant stated that his father was buried sometime in the year 1966, his witnesses CW1, CW2

and CW3 stated that the Claimant's father was buried sometime in the year 2010. He therefore concluded that the evidence of the Claimant and his witnesses are riddled with inconsistencies and contradictions and should not be believed or acted upon by this Court.

I have carefully gone through the evidence of the Claimant and his witnesses. I cannot find where the alleged witnesses contradicted the Claimant in relation to his father's death or burial. For the avoidance of doubt, under cross examination, the C.W.1 stated thus: ***"I know when the Claimant's father died, but I cannot remember the exact date"***. Also under cross examination, the C.W.2 stated that he knows when the Claimant's father died but he did not state the date in his testimony. He further stated that he does not know whether the Claimant's father was buried in 2010. On his part, the C.W.3 stated that he does not know when the Claimant's father's burial rites were performed. Consequently, I hold that there is nowhere the Claimant's witnesses informed the Court that the Claimant performed his father's final burial rites sometime in 2010 as submitted by the learned counsel for the Defendants.

At the trial, the Claimant led credible evidence of the identity of the land in dispute. In his Statement on Oath of 20/1/2014, he stated that he shares a common boundary with Stephen Okoyomon Okosun, now deceased and Anslem Balogun. He called one Saturday Eraga, the caretaker of Anslem Balogun's land who testified as CW2 to confirm his claim of having a common boundary with Anslem Balogun. The evidence of one Friday Ehiamentalor (C.W.1) who told the Court that he bought his land from late Stephen Okoyomon Okosun, the claimant's boundary neighbour and thereby shares boundary with the claimant, further consolidated the ownership claim of the claimant in respect of the land in dispute. It is settled law that in a claim for declaration of title to land, the onus is on the claimant to prove clearly the boundaries of the land claimed. See ***Baruwa v. Ogunshola 4 WACA 159; Udofia v. Afia 6 WACA 216 at 217: Amata v. Modekwu 14 WACA 580 at 583.***

There is undisputed evidence by all the parties that part of the land in dispute forms part of a large expanse of land originally deforested by the claimant's great grandfather, late Pa Ekah. The Defendants were unable to discharge the onus on them to prove that the claimant's grandfather, Pa Okosun Ogbebor actually gave the land in dispute or any part thereof as a gift to the alleged beneficiaries from whom the 3rd Defendant traced his root of title.

It is pertinent to observe that in this suit, the roots of title of the 3rd Defendant are the three Deeds of Transfers admitted as Exhibits "A", "B" and "C" at the trial. In their pleadings they relied on the said Deeds as their root of title to the disputed lands. For example, in ***paragraph 37 of their Consequentially Amended Statement of Defence***, they pleaded as follows:

"37.The Defendants states that Felix O. Okhomenbhelo being the cousin to the claimant participated activity in the sales and transfer of the land measuring approximately 310ft by 405ft by 100ft by 205ft by 200ft by 200ft by the Ugege family to the 3rd defendant, by not only acting as a land speculator/agent to the 3rd defendant but also signed the deed of transfer, the 3rd defendant shall be relying on the Deed of transfer between the Ugege family i.e. Rev. M.O. Ugege, Mr. Joseph Ugege, Pastor John Ugege (Jointly) and the 3rd defendant in proof of his case."

It is also pertinent to observe that Exhibits "A", "B" and "C" are all unregistered land instruments. It is trite law that such documents are inadmissible as evidence of title to land. Such unregistered land instruments even if inadvertently admitted ought to be expunged from evidence. See ***AKINDURO V ALAYA (2007) LPELR-344 (SC)*** where ***ADEREMI JSC at pages 17-18 D-B*** observed thus:

"Land Instruments Registration Law has substantially universal contents in all the States in Nigeria. Under Section 2 of the Law the word "INSTRUMENT" is defined to mean a document affecting land in the state whereby one party usually called the grantor confers, transfers, limits, charges or extinguishes in favour of another party called the grantee any

right or title to or interest in the state. Going by Section 15 aforesaid, an unregistered document affecting land must not be pleaded and neither is it admissible in evidence. See Ogunbambi v. Abowaba 13 WACA 222: Olowoake v. Salawu (2000) 11 NWLR (Pt.677) 127 and Adesanya v. Aderonmu (2000) 6 SC. (Pt.11) 18; (2000) 9 NWLR (Pt. 672) 370. And if such a document is pleaded a trial Judge upon an application made to it, must strike out paragraphs of pleadings where such unregistered document is pleaded. See Ossai v. Nwajide & Anor (1975) 4 Sc. 207. Even where the unregistered document was mistakenly admitted in evidence; part of the evidence relating to that unregistered document should be expunged for reason of lacking evidential value. "

Incidentally, the Defendants themselves admitted that Exhibits "A", "B" and "C" were not registered. In an attempt to wriggle out of the problem, the learned counsel for the Defendants contended that although Exhibits "A", "B" and "C" ought to be registered being registrable instruments, he submitted that in spite of being un-registered, they possess an equitable power which vested some equitable rights/interests on the 3rd Defendant over the land in dispute.

The submission of the learned defence counsel appears valid in certain regards. It is settled law that a purchaser of land by virtue of an unregistered instrument having paid the price and gone into possession acquires an equitable interest in the land which is as good as a legal estate. In the case of ***Hamidu v. Sahar Ventures Ltd. (2004) 7 NWLR (Pt.873) 618 the Court of Appeal at page 649*** stated that ***an unregistered registrable instrument is still admissible to prove equitable interest and payment of purchase price or rent***.

Also in ***Yaro v. Arewa Construction Ltd. (2007) 17 NWLR (Pt.1063) 373 at 373***, the Supreme Court held as follows:

"An equitable interest in land is acquired when there is payment of money coupled with possession."

However, it is settled law that mere production of title deeds is not proof of title when the root of title of the grantor was neither admitted nor established. See: ***Ogunleye v. Oni (1990) 2 N.W.L.R. (Pt. 135) 745; Kalio v. Woluchem (1985) 1 N.W.L.R. (Pt. 4) 610 at 628, Piaro v. Tenalo (1976) 12 SC 31 at 41-42.***

In the case of ***Ogunleye v. Oni (1990) 2 NWLR (Pt 135) 745 at 782-783:-*** the court posited thus:

"But it would be wrong to assume ... that all that a person who resorts to a grant as a method of proving his title to land needs to do is to produce the document of grant and rest his case. Rather, whereas ... it may suffice where the title of grantor has been admitted, a different situation arises in a case like this where an issue has been raised as to the title of the grantor. In such a case the origin of the grantor's title has to be averred on the pleading and proved by evidence ... this Court has made it clear in several decisions that if a party bases its title on a grant...that party must go further to plead and prove the origin of the title of that particular person, family or community unless that tittle has been admitted."

Where as in the present suit, the Vendors' roots of title have been impeached, it is evident that the purported Deeds of Transfer have become worthless. The substratum of the alleged transfers have been vitiated. The position of the law is that you cannot put something on nothing and expect it to stay there, it will collapse. See: ***Macfoy v. U.A.C. Ltd. (1962) AC 152 at 160.***

Although the Defendants tried to prove that they have been in possession of the land in dispute, the position of the law is that where the radical title pleaded is not proved, it is not permissible to support a non-existent root of title with acts of possession. It is not permitted to substitute a root of title that has failed, with acts of possession which could have derived from that root. See ***Odofin v. Ayoola (supra) 116;*** and ***Ndukwe v. Acha (1998) 6 NWLR (Pt. 552) 25, (1985) 5 SCNJ at 28 at 38-39***.

On the whole, I am of the view that the preponderance of evidence in this suit weighs heavily in favour of the Claimant. His evidence of the traditional history of the land established how his ancestor, the original owner acquired the land by deforestation. Furthermore, his evidence established an unbroken line of inheritance of the disputed land from the Claimant's ancestors down to himself. On the part of the Defendants, I am of the view that their evidence of traditional history of the land culminating in the alleged purchase of same by the 3rd Defendant appears quite uncertain and unreliable.

As I pointed out in the course of this judgment, from the evidence led, in proof of his claim, the Claimant appears to be relying on three different means of proof, to wit: proof by traditional evidence; by acts of ownership; and by acts of long possession and enjoyment of the land. I also pointed out that any one of the five means of proof of title to land will suffice 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***. Since the Claimant has succeeded in establishing his title by evidence of traditional history of the land, I do not intend to consider the other means of proof in this case.

In the event, the sole issue for determination is accordingly resolved in favour of the Claimant. Having resolved the sole issue in favour of the Claimant, the Claims succeed and they are granted as follows:

(a) A declaration that the claimant is the proper person entitled to apply for and be granted statutory right of occupancy in respect of the piece/parcel of land measuring approximately 400ft by 800ft lying and situate at Uzeguah Quarters, Efandion Village, Uromi an area within the jurisdiction of this Honourable Court; and

(b) A perpetual injunction restraining the defendants, their agents, servants, privies and/or workmen from further encroaching into the said land, now in dispute.

Costs is assessed at N100, 000.00 (one hundred thousand naira) in favour of the Claimant.

Hon. Justice P.A.Akhihiero
29/04/21

<u>COUNSELS:</u>
DR. P.E.AYEWOH-ODIASE----------CLAIMANT
J.E.ENAHOLO ESQ----------DEFENDANTS