

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIRO,
ON THURSDAY THE 10TH
DAY OF MARCH, 2022

BETWEEN:

SUIT NO. HCU/10/2016

GODWIN EBOSELE-----CLAIMANT

AND

DAVID IGENE-----DEFENDANT

JUDGMENT

The Claimant instituted this suit vide a Writ of Summons and Statement of Claim dated and filed on the 24th day of February 2016, seeking the following reliefs:

- 1. A declaration of the Honourable Court that the Claimant is the proper person entitled to apply for and be granted right of occupancy in respect of the piece/parcel of land measuring approximately 120 feet by 70 feet lying, situate and being at Idumu-Eka Quarters, Efandion Uromi, an area within the jurisdiction of this Honourable Court;***
- 2. The sum of N900, 000 (Nine Hundred Thousand Naira) only being general damages for acts of trespass by the defendant unto the said piece/parcel of land; and***
- 3. An order or perpetual injunction restraining the defendant, his agents, servants, privies and workmen from further acts of incursion into the said piece/parcel of land.***

In proof of his case the Claimant testified and called two witnesses Paul Iboi and Friday Ujiagbedion who testified as CW1 and CW2 respectively.

The Claimant's case is that he is the owner of the piece/parcel of land containing native pear trees, plantation, banana, pawpaw etc. measuring approximately, 120ft by 70ft, lying and situated at Idumu–Eka Quarters, Efandion Uromi.

He alleged that he inherited the said piece/parcel of land from his deceased father, Pa. Ebosele Inojie on the 6th day of June 2005 in accordance with Esan Native and Custom of Idumu Eka Efandion Uromi in his capacity as the eldest surviving male child, after performing the funeral rites of his deceased father.

He said that his deceased father equally inherited the said parcel of land from his father, Pa. Ogbekhilu Inojie in accordance with Esan Native Laws and Custom of Idumu – Eka Efandion Uromi sometime 1949 after performing his funeral rites as the eldest surviving male child of his deceased father.

According to him, his grandfather, Pa Ogbekhilu Inojie, inherited a vast expanse of land which originally formed part of the land now in dispute from his father, Pa Ikhirimon Izekor who deforested the said vast of expanse of land, part of which is now in dispute sometime in 1885 after performing his funeral rites in accordance with Esan Native Law and Custom of Idumu Eka, Efandion Uromi as the eldest surviving male child of his deceased father.

He alleged that Pa Ikhirimon Izekor deforested a large expanse of land measuring approximately 200ft by 300ft part of which is now in dispute sometimes in 1840 by felling Obeche, Mahogany, Iroko trees e.t.c.

That after the deforestation of the said vast expanse of land, his great grandfather started to farm on it and was assisted in his farming activities by his sibling and children alike.

He said that while his great grandfather was farming on the said vast expanse of land and planted crops such as yams, cassava, coco yam, palm trees etc, he erected a mud house on part of the land where he lived with members of his family until his death sometime in 1885 and the ruins of the said mud house are still visible on the said land now in dispute.

That after the death of his great grandfather, his grandfather inherited the said vast expanse of land and continued with the farming activities of his father by planting other crops such a cocoa, rubber, cola nut trees, duca nut trees, palm trees, yams, melon, maize etc, while nurturing the economic crops left behind by his father.

According to him, while his grandfather was farming on the said vast expanse of land, he lived in the said mud house built by his father until his death sometime in 1949.

The Claimant alleged that his father, Pa Ebosele Inojie inherited the said expanse of land left behind by his own father and started to farm on part of it by planting maize, yams, cocoyam, pineapples etc., without any challenge from anybody including the Defendant's father, Pa Igene Okoduwa, now deceased.

That while his father was farming on part of the land, he erected a mud house on part of the said expanse of land where he lived with members of his family including the Claimant until he died in June 2005.

The Claimant alleged that while his father was alive, he sold part of the said expanse of land to one Mr. Igberase without challenge from anybody including the Defendant who he claimed is fully aware that the said Mr. Igberase is still in possession of that land till date.

The Claimant stated that after performing the final funeral rites of his deceased father, he started to erect a building on part of the said expanse of land and the building has gotten to roofing stage.

He said that the Defendant did not challenge him in respect of his building activities on part of the expanse of land which he inherited from his deceased father. That since he inherited the land in 2005, nobody including the Defendant ever challenged him until sometime in March 2015 when the Defendant forcibly entered the land in dispute measuring approximately 120 by 70ft, cleared same and planted yam on it without his consent.

He said that he challenged the defendant over his act of trespass and the Defendant maintained that he was the owner of the land now in dispute. That arising from the Defendant's act of trespass into the land in dispute, he summoned the Defendant to the Efandion Committee and both parties were invited to testify.

That after hearing from both parties, the Efandion Committee delivered its verdict in his favour by affirming his ownership rights to the land now in dispute.

That in spite of the said verdict, the Defendant persisted in his act of trespass unto the land in dispute and he reported the Defendant again to the Efandion Committee who invited him but he refused to honour the invitation.

He said that arising from the Defendant's refusal to appear before the Efandion Committee, the Committee reported the matter to the Council of Elders of Efandion Uromi who thereafter summoned both of them.

He said that the Council of Elders adjudicated over the dispute and they decided in favour of the Claimant sometime in August 2015. That after the Elders verdict, the Defendant was instructed to harvest his yams on the land in dispute and thereafter relinquish possession of the land to the Claimant.

That pursuant to the Elders' verdict, the Defendant harvested his yams on the land in dispute and stopped further act of trespass until the 21st of February 2016 when the Defendant trespassed into the land, cleared it and fenced it round with bamboo trees.

That at that stage, the Claimant instructed a tipper driver to deposit a trip of sand on the land in dispute to stop the proposed activities of the defendant on the disputed land.

He alleged that on the 22nd of February, he visited the land in dispute and was arrested by the Police at the instance of the Defendant and while at the Uromi Police Station, the Defendant maintained that the land in dispute belongs to him hence he filed this suit against him.

On his part, the Defendant filed a Statement of Defence and Counter-Claim wherein he counter-claimed against the Claimant as follows:-

(a) A delaration that the Defendant is the proper person entitled to apply and be granted a Statutory Right of Occupancy over all that piece/parcel of land measuring approximately 120 feet long and 70 feet wide situate at Idumu-Isoko Quarters, Efandion, Uromi an area within the jurisdiction of this Honourable Court.

i. The sum of N900,000 (Nine Hundred Thousand Naira only) being general damages for the Claimant's several acts of trespass unto the said parcel of land; and

ii. An Order of Perpetual injunction restraining the Defendants, his agents, servants and privies from further trespass onto the said parcel of land.

In proof of his defence and counter-claim, the Defendant testified and called one witness, Vincent Anenin.

In his evidence, the defendant stated that the Claimant resides at Idumu-Isoko, Efandion, Uromi and not at Idumu-Eka, Efandion, Uromi.

According to the Defendant, the parcel of land which the Claimant is claiming is a parcel of land measuring 100ft x 50ft which was given to the Claimant's father by the Defendant's father in 1963 when the Claimant's father followed the Defendant to Uromi as a friend during the NCNC and Action Group Political fights in Ewohimi.

The Defendant maintained that the Claimant's father is a native of Agadaga Ewohimi, Esan South East Local Government Area of Edo State and not an indigene of Efandion, Uromi. He said that the Claimant lied when he alleged that his forebear by name Pa. Ikhirimon Izeko deforested a parcel of land including the land now in dispute.

He stated that no person either dead or alive ever bore the name Ikhirimon as the village i.e Idumu-Isoko, Efandion and their ancestral deity is called Ikhirimon. That Ikhirimon could not have been the father of Ogbekhilu or grandfather to the Claimant.

He alleged that none of Claimant's forebears ever lived in Uromi except his father Pa. Ebosele Inojie who was brought to Uromi Efandion Idumu-Isoko by the Defendant in 1963 as a friend.

According to the Defendant, the Claimant's native place is Agadaga Ewohimi and upon the death of the Claimant's father he was buried at the site where he built his house despite several demands for his corpse by his relatives at Agadaga Ewohimi for interment at Ewohimi.

The Defendant asserted that the said Pa. Ikhirimon Izeko, the Claimant's grandfather never lived in or deforested the land in question and that the only ruins that can be found on the land in dispute belonged to the Defendant and members of his family and that apart from the Claimant's father no other person mentioned by the claimant was ever buried on the land.

He said that the Claimant attempted to sell a portion of the Defendant's land to a certain Mr. Igberaese. He alleged that the Defendant resisted the sale and the said Mr. Igberaese has been asking the Claimant for the refund of his money while negotiating a re-purchase from the Defendant a gesture which the Defendant has refused to accede to.

The Defendant alleged that he is the owner of a large parcel of land measuring 1000 feet long and 1500 feet wide and that the subject matter of this suit only forms a small part of it.

The Defendant alleged that he is the owner of all this parcel of land through customary inheritance from his late father Pa. Igene Okoduwa, the defendant being the Eldest surviving son.

According to him, the land in question including the subject matter of this suit was deforested by late Pa. Egbehi in the late 1600 while Pa. Egbehi's time was during the reign of His Highness Onojie-Oghughu – Obor of Uromi.

He said that Pa. Egbehi was succeeded by his Eldest son called Ewah who begot Okoduwa as his eldest surviving son while Okoduwa begot Igene as the eldest surviving son while Igene begot the Defendant as his eldest surviving son. He alleged that all these aforementioned eldest surviving sons succeeded their respective fathers and inherited their father's assets including their landed properties according to the customary laws of Uromi concerning succession and inheritance by performing the traditional burial rites accordingly.

The Defendant alleged that he was a trader buying and selling rubber lumps in the 1950's through the 1970's and his trade used to take him all over Esanland including Ewohimi where he had a depot where he gathered his purchase from the hinterland for onward transportation to Uromi where he sold to the Rubber buying companies of Tomopulous and Lewis and Peat.

That in the course of doing this business, he met the late Mr. Ebosele who is the father of the claimant who became his Agent at Ewohimi.

That thereafter both the defendant and the Claimant became friends and the Defendant brought the Claimant's father to Uromi in 1963 and the Defendant approached his own father, the late Pa. Igene Okoduwa to give the Claimant's father a place to build a house and a parcel of land measuring 100ft by 50ft was given to Mr. Ebosele where he built his house.

He alleged that after the death of the Claimants father, the Claimant attempted to encroach on the Defendant's land by selling a portion beyond the 100ft long by 50ft wide that was given to the Claimant's father to a certain Mr. Igberaese and also erecting a structure on another part of Defendant's land. He said that he resisted these attempts.

The Defendant alleged that he had been farming on a portion of his land beside the Claimant's house peaceably until the Claimant went onto the Defendant's farm to cut down and destroyed the bamboo fence around the farm causing a lot of damage to Defendant's crops in January, 2016.

He said that this act of damage by the Claimant forced him to arrest the Claimant to the Nigeria police station, Uromi.

The Defendant alleged that he always farmed on the portion of land excluding the portion upon which the Claimants's house was built and that he sold certain portions to the following persons (1) Mr. Benjamin Igene (2) Mr. Aramude Monday (3) Mr. Daniel Omonua (4) Mr. Thomas Ikiakhele and (5) Mr. Simon Omije. That all of them maintain boundaries with the Claimant's portion of 100ft by 50ft while a certain Mr. Aneni Vincent also shares a common boundary with the land in question on one side.

At the close of the Defendant's case, the suit was adjourned for the adoption of final written addresses.

In his Final Written Address, the learned counsel for the Defendant **Lucas Okojie Esq.**, submitted that the Claimant failed to lead evidence whether his parcel of land is restricted to the parcel of land in dispute inclusive of the land upon which the late father built his house which is of a size of 100feet by 50 feet.

He posited that the Claimant conceded that he grew up to meet his late father settled on the land and that he is a neighbor to the Defendant. He said that he led no evidence to state whether his late father ever had any ownership dispute or claim over this parcel of land now being disputed with the Defendant.

He posited that the Claimant did not lead any evidence to show that he owned more than the land in dispute and the parcel of land upon which he has his inherited house. He said that although the Claimant called evidence from his witnesses to prove his case, none of his witness could corroborate his evidence as to how he could sustain ownership of the land in dispute.

He said that the Defendant testified and also called witnesses that he owns the land through inheritance from his forefathers who deforested the land and through generations until the land devolved on him.

He posited that the Defendant claims that the parcel of land which is now in dispute is a smaller portion of the entire portion of land owned by him. He also

claimed that the portion of land where the Claimant has his house is within his parcel of land and that the land was given to the Claimant's father by his father at the Defendant's behest. He said that the Defendant called witnesses to corroborate his assertion that he owns the land now in dispute.

He said that the Defendant also led evidence to show his continued acts of ownership and possession over this parcel of land measuring 120feet by 70feet by farming on it annually and fencing it with sticks to keep out goats.

Furthermore, he posited that the Defendant also claim that the said parcel of land is at the front of his house and contiguous to his parcel of land until a street called Igene Street named after him was created also by the Defendant. He cited *Section 35 of the Evidence Act* and the cases of *Idudu vs Okumagba* and *Piaro vr Teniola (1976) 12sc 31-43-44*.

The learned counsel formulated two issues for determination as follows:

- I. *Has the root of title to the land been proved by either of the parties?;*
- II. *Has any of the parties through credible evidence shown that he has demonstrated Acts of ownership and possession over the land?*

He submitted that if parties' evidence of ownership is hinged on traditional history, the following factors must be considered:

- i. *Who amongst the contending parties has demonstrated acts of ownership?*
- ii. *Long possession of the land;*
- iii. *Proof of ownership of adjacent land; and*
- iv. *A credible historical evidence.*

He submitted that the Defendant in his claim to the ownership of the land in dispute met all the requirements of a credible claim to ownership of the land though only proof of one of the four requirements could suffice in his favour.

He submitted that the historical evidence adduced by the Defendant is more credible than that offered by the Claimant and he cited the case of *Kojo vs Bonsie (1957) 1 WLR 1223*.

He said that while the Claimant posited that his root of title is derived from a certain Ikhiremon, the Defendant debunked that fact claiming that Ikhiremon

was a deity and not a person. He posited that the Claimant could not have descended from a deity.

He posited that the Defendant on his part traced his root of title to his late father who he claimed inherited the land from the Defendant's grandfather in accordance with the native law and custom of Uromi which the Efandion community is subject to as pertaining to inheritance. He said that the Defendant also claimed that his forebears deforested the land over several centuries ago.

He posited that the Defendant claimed that he had been in active use and possession of the land in dispute even while the Claimant's father was alive without any let or hindrance. He said that amongst the several acts of ownership demonstrated by the Defendant's family is the gift of land made to the Claimant's family by the Defendant's father.

He posited that both parties based their ownership on traditional history and he urged the Court to give credence to the evidence of the Defendant and his witnesses. He said that the Defendant led evidence that he owns all the surrounding parcels of land making the disputed parcel of land contiguous to the Defendant's land. He cited the case of *Idudun vs Okumagba-1976 9-10 sc/(1976) INMLR. 200* and *section 35 evidence Act 2011*.

He submitted that the evidence of the Defendants makes it most probable and believable that the Defendant owns the land in dispute.

He submitted that the claim by the Claimant that his family descended from a certain Ikhirimon is unbelievable as Ikhiremon was only a deity and not a person. He said that he failed to give further particulars about the existence of the said Ikhiremon and he referred to the case of *IRIRI vs ERHUHOBARA (1991) 2 NWLR pt 173-252 of 267* which held that "*a Trial Judge is entitled to reject evidence of traditional history which is incredible*".

Counsel submitted that Claimant's assertion that as part of his exercise of ownership of any land beyond where his late father has his house is also not believable. He said that it is his duty to call the person he claimed his father sold a portion of his land to. He pointed out that the Claimant failed to call the said Igberaese to confirm the claim and he cited the following authorities: *section 167(d) of the Evidence Act; ADEGBO V OGBANJE (2014)10 NWLR pt(1416) 5411 CA; sect. 169(d) of the Evidence Act(2011); and OGIOURU v CO-OPERATIVE BANK (1994)5 NWLR pt(365)685*.

On the issue of the content of unified list by local government employees i.e Exhibit A, he urged the court to discountenance whosoever it stands for in favour of the Claimant as it is of no consequence in this case, as it is not in issue in this case and therefore not relevant. He said that the evidence purportedly meant to serve by the said document did not become evidence in the case in hand as the case between the Claimant and the Defendant in this suit is different from the said Exhibit A. He cited *section 39 of the Evidence Act 2011* and the case of *SOSAN v ADEMUYIWA (1989)3 NWLR (pt. 27) 241*.

Finally, he urged the Court to dismiss the Claimant's case in its entirety.

In his Final Written Address, the learned counsel for the Claimant, *B.E.Emiowe Esq.* formulated two issues for determination as follows:

1. WHETHER THE CLAIMANT HAS FULLY DISCHARGED HIS EVIDENTIAL BURDEN OF PROOF ON THE PREPONDERANCE OF EVIDENCE ENTITLING HIM TO THE JUDGMENT OF THIS HONORABLE COURT?;

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

The learned counsel thereafter articulated his arguments on the two issues seriatim.

ISSUE ONE:

Whether the claimant has fully discharged his evidential burden of proof on the preponderance of evidence entitling him to the judgment of this Honourable Court?

On issue one, 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 disputed land which originally formed part of the vast expanse of land was deforested by his great, great grandfather after which, it devolved on his grandfather then to his father and finally to himself through inheritance. He submitted that the evidence of the Claimant is consistent with evidence of traditional history. See the case of *Iroagbara V. Ufomadu (2009) 30 W.R.N, Page 1 at P.16 lines 10-15*.

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

He submitted that the issue of the sign post bearing David Igene Street, mounted at the entrance of the land now in dispute which was elicited by the Defendant's counsel during cross examination was not borne out from pleading to warrant him to ask that question. He submitted that it is trite law that what is not pleaded goes to no issue and he relied on the decisions in the cases of *W. C.C Ltd v Batalh (2006) 9 NWLR part 986 page 595 at 605 ratio 9*; and *Adebayo V Shago (2005) 7 NWLR part 925 page 467 at 471 ratio 2*. He further submitted that a Court has the power to expunge facts not pleaded from its record and he urged this Honourable Court to expunge the issue of David Igene Street from the record.

Counsel further submitted that the Claimant stated in his statement on oath of 4th February 2016 that he shares common boundary with Friday Ujagbedion who is the CW2 in this suit to confirm his claim of having common boundary with him. On the importance of evidence of boundary neighbor, he cited the case of *Shoshaigambo V Zundul Trndarn (1993) 6 N.W.L.R part 300 page 500 at 505*.

He submitted that the evidence of the CW2 who told the Court that he shares a common boundary with the Claimant has further consolidated the ownership claim of the Claimant in respect of the land in dispute.

On onus of proof in civil case, he referred to the case of *Organ V Nigeria Liquefied Natural Gas Limited (2015) 11 W.R.N page 1 at page 40 lines 20-25*.

He submitted that it is on record that the CW2 is from Idumu Eka and also a boundary neighbour.

Counsel submitted that the Claimant and his witnesses have led credible and unchallenged evidence in proof of the Claimant's ownership claim to the land in dispute. On the effect of unchallenged evidence, he cited the case of *Banbock Ltd V First Atlantic Bank Plc (2007) 51 W.R.N page 181 at page 193 lines 20-30*.

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 and he cited the case of *Orlu V Gogo – Abite (2010) Vol, 181 LRCN, Page 193 at page 216EE*.

Counsel submitted that the Defendant has 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 submitted 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 to the case of *Obeneche V Akusobi (2010) 30 WRN page 117 at P. 137 line 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; and*
- 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 Defendant’s claim to the land in dispute is not spurious and vague?

On issue two, learned counsel submitted that the Defendant’s ownership claim to the land in dispute is bare, spurious and unfounded.

He said that the Defendant under cross examination told Court that there was never customary arbitration and that the Claimant never sued him there. He submitted that the Defendant’s answer under cross examination contradicts his evidence in Court. He further submitted that the essence of cross examination is

to impeach the credit of witnesses and he cited *Section 233 of the Evidence Act 2011*.

He posited that under cross examination, the Defendant admitted that one Adodo lives close to him and that he is from Idumu Eka quarters, Efandion Uromi. He said that the defendant also told the Court that there are many Idumu Isoko people that live around him and close to the land in dispute, but failed to call any of them as his witness to prove his ownership claim to the land in dispute.

He said that the Defendant's admission that Adodo who is from Idumu Eka lives close to him reinforces the fact that the Claimant and the land now in dispute, are in Idumu Eka which is also corroborated by the evidence of the CW2 who also shares boundary with the Claimant. He said that with his admission, the location of the land is at Idumu Eka not at Idumu –Isoko.

Counsel posited that the Defendant stated in his evidence that the only Ikhiremon he knows is the deity which they worship. He submitted that the Defendant's evidence corroborated the evidence of the Claimant when he said that Ikhiremon was his ancestor arising from the fact that in Africa society, in the olden days our forefathers name their children after deities which is not out of place as in the Claimant's case.

He further submitted that from the doubtful, contradictory and irreconcilable evidence of the Defendant and his witness, it is obvious that the Defendant's ownership claim is shrouded in mystery and conjecture.

He said that the Defendant the told Court that he brought the Claimant's father from Ewohimi in 1963 in **Paragraph 9** of the Defendant's statement on Oath. He said that during cross examination, he made a U-turn and said that he never said that he brought the Claimant's father from Ewohimi in 1963.

He submitted that Exhibit "A" revealed that the Claimant was born on the 3rd of April 1961. He referred the Court to Serial No. 312 of the said Exhibit "A" where the Defendant's information are contained. He said that the question that is begging for answer at this juncture is whether it is possible for a child who was barely **TWO YEARS** old in 1963 to bring a person who was about **FIFTEEN YEARS** old to Uromi in 1963 and also helped him (the Claimant's father) to approach his own father to give the Claimant's father land to build a house. He answered the question in the negative and urged this Honourable Court to also answer the question in the negative.

He submitted that no amount of evidence can distort the clear and unambiguous intendment of Exhibit “A”. 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 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 submitted that documentary evidence could be used as hanger to test the veracity of oral testimonies and he relied on the case of *Bunge V Governor of River State (2006) 10 M.J.S.C Page 136 at P. 184 Para. D.*

He further submitted that flowing from the age of the Defendant who was born in 1963, it goes without argument that he knows nothing relating to how the land deforested by the Claimant’s forebear came about, part of which is now in dispute.

He said that the Defendant also admitted during cross examination that he has been living in Idumu – Isoko ever since. He submitted that from the admission of the Defendant, it goes to show that the defendant was aware when the Claimant’s father was exercising ownership claim over the vast expanse of land, part of which he sold to Mr. Igberase in 2003 which was not challenged by the Defendant.

He submitted that the Defendant told the Court that he shares a common boundary with the DW1 on one side and the DW1 also told the Court that he shares common boundary with the Defendant but admitted under cross examination that between the land in dispute and the valley there are about three or four houses. He submitted that valley or moat has always been the natural boundary between two communities, states and sometimes countries. That in this case the DW1 admitted under cross examination that the valley does not belong to an individual but to Uzegua and Idumu Isoko communities.

He further submitted that the DW1 lied when he told this Honourable Court that the Ducanut tree at the back of one Omodia’s house is his father’s own as same is on this side of the valley before one gets to Uzegua community.

He further submitted that the DW1 also told the Court that after the valley, you get to St. Ignatius Catholic Church. That from the land in dispute to his house

are not up to twelve house. He said that this presupposes that there are houses after the land in dispute before getting to the DW1's house.

Counsel submitted that the DW1 admitted under cross examination that he is from Uzegua in Efandion while the defendant is from Idumu-Isoko in Efandion and that his forebears deforested land in Uzegua where he still farms till date. Also that his forebears have no land in Idumu Isoko, but also admitted that the Duca-nut tree is at the back of Omondia's house.

He submitted that from the evidence of the DW1 under cross examination, it can be gleaned that the Defendant and DW1 do not share common boundary on any side of the disputed land which further reinforces the fact that the Defendant and his sole witness are not boundary neighbours. On the importance of the evidence of boundary neighbours, he cited the case of *Shoshai Gambo V Zundul Tundarm (Supra)* and submitted that the Defendant and the DW1 do not know the land in dispute.

Counsel submitted that during cross examination the DW1 told the Court that the land in dispute is facing Ubiaja Road and in another vein, he told the Court that the land in dispute shares common boundary on all sides with the Defendant's land. He submitted that the Defendant and his sole witness failed to identify the land in dispute. On duty of a party to properly identify the land which his claim relates, he cited the case of *Ogedungbe V Balogun (Supra)*.

He posited that the Defendant was present when the Claimant upon the death of his father continued exercising ownership claims to the land by burying his late father on part of the land now in dispute which was confirmed by the defendant in his **paragraph 12** of his deposition before this Honourable Court. He said that the defendant was also present when the Claimant erected a building on part of the land now in dispute to roofing stage and when he dropped trip(s) of sand on the land now in dispute.

He submitted that the question begging for answer again is why was the Defendant watching the claimant exercising these various and numerous acts of ownership without any resistance from the Defendant, only for him to suddenly wake up sometime about 2015 to start claiming ownership of the vast expanse of land including the one now in dispute?.

He submitted that the lack of resistance on the part of the Defendant clearly demonstrates the fact that the Defendant is not the owner of the vast expanse of land including the one now in dispute.

He said that the DW1 told the Court under cross examination that during the life time of the Claimant's father, nobody including the Defendant challenged the Claimant's father over ownership of the land in dispute and his answer was that they were not quarreling when the Claimant's father was alive. He submitted that this answer from the DW1 implied that nobody including the Defendant actually challenged the Claimant's father over ownership of the land now in dispute.

He posited that the DW1 told the Court under cross examination that the Claimant's family came from Ewohimi and later somersaulted to the effect that the Claimant is from Idumu – Eka which is one of the quarters that make up Efandion community, Uromi. He therefore submitted that arising from the Defendant and the DW1's admission, contradictions, unreliable and incredible evidence, issue two should also be resolved in the affirmative.

RESPONSE TO THE SUBMISSION OF DEFENDANT'S COUNSEL

He submitted that the counsel's address does not reflect the true position of the claimant's statement of claim and the evidence before the court. He submitted that the claimant led credible evidence to the effect that the his grandfather, Pa. Ogbekhilu Inojie inherited a vast expanse of land which originally formed part of the land now in dispute from his father. He referred to paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 1, 15, 16 and 17 etc of the Claimant's statement of claim as well as paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 etc of the Claimant's statement on oath.

He submitted that the Defendant's submission that the Claimant failed to lead evidence of whether his parcel of land is restricted to the parcel of land in dispute inclusive of the land upon which the late father built his house which is a size of 100feet by 50feet is most misleading.

He submitted that there is nowhere the Claimant ever conceded to anything whether in his pleadings, evidence in court or during cross examination. He posited that the Claimant saying that he grew up to meet his late father settled on the land and that he is a neighbor to the Defendant does not translate to a concession. He said that the true position is that the Defendant never disputed the

vast expanse of land part of which is now in dispute with the Claimant's father when he was alive.

He submitted that the Claimant's evidence that he met his father settled on the land is part of traditional history which is one of the five ways of proving ownership claim to land as enunciated in the case of *Idundun Vs. Okumagba (1976) 9-10SC page 227*.

In response to the Defendant's submission that none of the Claimant's witnesses could corroborate the Claimant's evidence as to how he could sustain ownership of the land in dispute, he submitted that the Claimant's 1st witness Paul Iboi told the court how he was assisting the Claimant's father to farm occasionally and to harvest crops on the land in dispute such as pear and banana for sale at Uromi market and other farming activities without challenge from anybody not even the defendant. That after the death of the Claimant's father, he was also assisting the claimant to harvest the native pear on the land in dispute without challenge by the Defendant.

He submitted that the Defendant called only Vincent Anenih who came from a faraway village of Uzegua in Efandion as his sole witness who does not share common boundary with the Defendant on any side of the land in dispute. He therefore submitted that from the evidence before the Court, it amounts to failure of the Defendant to call a boundary neighbor and he cited the case of *Shoshai Gambo V Zundul Turdam (Supra)*.

On the issue of calling Igberaese, he submitted that a party is not legally bound to call a host of witnesses to prove his case. He submitted that **section 167(d) of the Evidence Act, Adegbo V Ogbanje and section 169(d) of the Evidence Act 2011 (Supra)** are inapplicable to this case.

Upon a careful examination of the issues formulated by learned counsel for the parties, I observed that the Defendant filed a Counter-Claim in this suit so I am of the view that the two issues for determination in this suit are as follows:

- 1) Whether the Claimant has proved his case on the preponderance of evidence to warrant the judgment of this Court in his favour? and*
- 2) Whether the Defendant/Counter-Claimant has proved his counter-claim against the Claimant on the preponderance of evidence to warrant the judgment of this Court in his favour?*

I will now proceed to resolve the two issues seriatim

ISSUE ONE:

Whether the Claimant has proved his case on the preponderance of evidence to warrant the judgment of this Court in his favour?

In a claim for a declaration of title to land, the burden is on the Claimant to satisfy the Court that he is entitled, on the evidence adduced by him, to the declaration which he seeks. The Claimant must rely on the strength of his own case and not on the weakness of the defendant's case. See: *Ojo vs. Azam (2001) 4 NWLR (Pt.702) 57 at 71; and Oyeneyin vs. Akinkugbe (2010) 4 NWLR (Pt.1184) 265 at 295.*

It is now settled law that 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.

It is settled law that traditional history is the first mode of proof of title to land. See the case of *Idundun vs Okumagba (1976) 9 -10 SC 227.* In relying on

traditional history to establish title to land, a party must plead and lead credible evidence on the root of his title i.e. how, he came to own the land, linking himself right down to the original owner, and show how the said original owner acquired the land. See *Awodi & Anor vs Ajagbe (2014) LPELR 24219 (SC)*; *Akinloye vs Eyiola (1968) 2 NMLR 92*; *Owoade vs Omitola (1988) 2 NWLR (Pt.77) 413*. See also *Mogaji vs Cadbury Nig Ltd (1985) 2 NWLR (Pt.7) 393*.

On the traditional history of the land in dispute, the Claimant's evidence was that he inherited the parcel of land from his deceased father, Pa. Ebosele Inojie on the 6th day of June 2005 in accordance with Esan Native and Custom of Idumu Eka Efandion Uromi in his capacity as the eldest surviving male child, after performing the funeral rites of his deceased father.

He said that his deceased father equally inherited the said parcel of land from his father, Pa. Ogbekhilu Inojie in accordance with Esan Native Laws and Custom of Idumu – Eka Efandion Uromi sometime 1949 after performing his funeral rites as the eldest surviving male child of his deceased father.

According to him, his grandfather, Pa Ogbekhilu Inojie, inherited a vast expanse of land which originally formed part of the land now in dispute from his father, Pa Ikhirimon Izekor who deforested the said vast of expanse of land, part of which is now in dispute sometime in 1885 after performing his funeral rites in accordance with Esan Native Law and Custom of Idumu Eka, Efandion Uromi as the eldest surviving male child of his deceased father.

He said that while his great grandfather was farming on the said vast expanse of land and planted crops such as yams, cassava, coco yam, palm trees etc, he erected a mud house on part of the land where he lived with members of his family until his death sometime in 1885 and the ruins of the said mud house are still visible on the said land now in dispute.

That after the death of his great grandfather, his grandfather inherited the said vast expanse of land and continued with the farming activities of his father by planting other crops such a cocoa, rubber, cola nut trees, duca nut trees, palm trees, yams, melon, maize etc, while nurturing the economic crops left behind by his father.

According to him, while his grandfather was farming on the said vast expanse of land, he lived in the said mud house built by his father until his death sometime in 1949.

The Claimant alleged that his father, Pa Ebosele Inojie inherited the said expanse of land left behind by his own father and started to farm on part of it by planting maize, yams, cocoyam, pineapples etc., without any challenge from anybody including the Defendant's father, Pa Igene Okoduwa, now deceased.

That while his father was farming on part of the land, he erected a mud house on part of the said expanse of land where he lived with members of his family including the Claimant until he died in June 2005.

The Claimant alleged that while his father was alive, he sold part of the said expanse of land to one Mr. Igberase without challenge from anybody including the Defendant who he claimed is fully aware that the said Mr. Igberase is still in possession of that land till date.

Incidentally, the Defendant is also relying on evidence of traditional history to establish his title to the land in dispute. In his evidence, he alleged that he is the owner of a large parcel of land measuring 1000 feet long and 1500 feet wide and that the subject matter of this suit only forms a small part of it.

The Defendant alleged that he is the owner of this parcel of land through customary inheritance from his late father Pa. Igene Okoduwa, he being the Eldest surviving son of his father.

According to him, the large parcel of land, including the subject matter of this suit was deforested by late Pa. Egbehi in the late 1600 during the reign of His Highness Onojie-Oghughu – Obor of Uromi.

He said that Pa. Egbehi was succeeded by his Eldest son called Ewah who begot Okoduwa as his eldest surviving son while Okoduwa begot Igene as the eldest surviving son and Igene begot the Defendant as his eldest surviving son. He alleged that all these aforementioned eldest surviving sons succeeded their respective fathers and inherited their father's assets including their landed properties according to the customary laws of Uromi concerning succession and inheritance by performing the traditional burial rites accordingly.

The Defendant alleged that he was a trader buying and selling rubber lumps in the 1950's through the 1970's and his trade used to take him all over Esan land including Ewohimi where he had a depot where he gathered his purchase from the hinterland for onward transportation to Uromi where he sold to the Rubber buying companies of Tomopulous and Lewis and Peat.

The Defendant alleged that in the course of doing this business, he met the late Mr. Ebosele who is the father of the Claimant who became his Agent at Ewohimi.

That thereafter he and the Claimant's father became friends and he brought the Claimant's father to Uromi in 1963 and approached his own father, the late Pa. Igene Okoduwa to give the Claimant's father a place to build a house and a parcel of land measuring 100ft by 50ft was given to Mr. Ebosele where he built his house.

The Defendant alleged that after the death of the Claimant's father, the Claimant attempted to encroach on the Defendant's land by attempting to sell a portion beyond the 100ft long by 50ft wide that was given to the Claimant's father to a certain Mr. Igberaese and to build on his land. He said that he resisted these attempts.

Clearly, there is a conflict in the evidence of the traditional history of the parties. Thus in a bid to debunk the Claimant's evidence of traditional history, the Defendant led evidence in his attempt to convince the Court that he was instrumental to the Claimant's father's acquisition of a parcel of land measuring only 100ft by 50ft where he built his house.

At this stage it will be necessary to juxtapose the evidence of the Claimant with that of the Defendant/Counter-Claimant in order to determine the issue of credibility. At the trial the Defendant gave evidence that he brought the Claimant's father from Ewohimi to Uromi in 1963 and that he approached his own father (late Pa. Igene Okoduwa) who assisted the Claimant's father to acquire the parcel of land measuring only 100ft by 50ft where he built his house.

In a bid to debunk the evidence of the Defendant about the alleged acquisition of land in 1963, the Claimant tendered Exhibit "A", the List of the unified Staff in Esan North East Local Government Area of Edo State 2014 to prove that the Defendant who was a staff of the Esan North East Local Government was listed as No. 312 on the Staff List and his date of birth was stated to be 3rd of April 1961.

In his written address, the learned counsel for the Claimant made heavy weather of Exhibit "A" and seriously contended that it is not possible for the Defendant who was barely two years old in 1963 to bring the Claimant's father who was about fifteen years old to Uromi in 1963 and also help him (the

Claimant's father) to approach his own father to give the Claimant's father land to build a house. The learned counsel urged the Court to reject the Defendant's version on this ground.

It is settled law that that documentary evidence can be used as a hanger to test the veracity of oral testimonies. See the case of *Bunge V Governor of River State (2006) 10 M.J.S.C Page 136 at P. 184 Para. D.*

Also in the case of *Ogundele V Agiri (2010) 9 WRN Page 1 at P.22 lines 20-30*, aptly cited by the learned counsel for the Claimant, the Supreme Court exposted as follows:

“Documents when tendered and admitted in Court are words uttered and do 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”

From the foregoing, I am of the view that in view of the salient revelation about the age of the Defendant as contained in Exhibit “A” I do not believe the Defendant's evidence that it was in 1963 that he assisted the Claimant's father to acquire a parcel of land measuring only 100ft by 50ft where he built his house in Uromi.

It is settled law that in order to succeed by proof of traditional history, the evidence must be credible and consistent without any gaps in the chain of succession. In the case of *Owoade v. Omitola (1988) 2 NWLR (Pt.77) 413 SC* the Supreme Court per *Nnaemeka-Agu, JSC* observed thus: ***“When ... a Plaintiffs case depends on tradition it is of utmost importance that the traditional evidence tendered must not only make a consistent sense but also that it affirmatively links the Plaintiff with the traditional history he relies upon.”***

Juxtaposed with the evidence of the Defendant, the traditional evidence of the Claimant appears more consistent and credible. The Claimant led evidence of an unbroken chain of succession and inheritance of the land in dispute from the time of deforestation by his ancestor Pa Ikhirimon Izekor to when he inherited the land from his late father Pa. Ebosele Inojie on the 6th day of June 2005.

The evidence of traditional history adduced by the Defendant appears rather sketchy and haphazard. More fundamental, the Defendant's testimony has

been discredited by Exhibit “A” which was admitted in evidence without any objection from the Defendant’s counsel.

From the foregoing, I am of the view that on the preponderance of evidence, the Claimant’s evidence of the traditional history of the land is more credible and acceptable than that of the Defendant. Thus the Claimant has established this first means of proof.

I will not proceed further to consider the remaining means of proof to wit: by acts of ownership and by acts of long possession and enjoyment of the land. As I stated earlier in this judgment, the Claimant can succeed on proof of any of the five means of proof.

I will now consider the other reliefs which the Claimant is seeking in this action.

The Claimant is seeking the sum of N900, 000 (Nine Hundred Thousand Naira) only being general damages for acts of trespass by the defendant unto the said piece/parcel of land.

On the relief of general damages for the Defendant’s acts of trespass, it is settled law that general damages are damages which the law implies or presumes to have accrued from the wrong complained of or as the immediate, direct and proximate result or the necessary result of the wrong complained of. A trial Court has the discretionary power to award general damages and when exercising such discretionary powers, it has the duty to calculate what sum of money will be reasonably awarded in the circumstance of the case. See *TAYLOR V. OGHENEVO (2012) 13 NWLR (pt. 1316) pg. 46 @ 66 paras F-H, GARBA v. KUR (2013) 13 NWLR (pt. 831) and BELLO v. AG. OYO STATE (1986) 5 NWLR (Pt. 45) 828.*

Thus, in awarding general damages, the Court would simply be guided by the opinion and judgment of a reasonable man. General damages are loses which flow naturally from the defendants act. See *IJEBU-ODE LOCAL GOVT. V. ADEDEJI BALOGUN & CO. LTD. (1991) 1 NWLR (Pt. 165) 136.*

The guiding principles for the award of damages for trespass to land is to compensate the victim for the loss he has suffered. It is a discretionary power of the Court which ought not to be exercised arbitrarily. *BAYELSA STATE GOVERNMENT & ANOR v. MR. ORIAKU EGEMZE & ORS (2019) LPELR-49088(CA).*

Furthermore, general damages may be awarded for trespass to land in recognition of the proprietary interest of the Claimant having regard to the circumstances of the case. See: *Umunna & Ors. v. Okwurawe & Ors (1978) LPELR-3378(SC)*; *Osuji & Anor v. Isiocha (1989) LPELR-2815(SC)*; *Adamu v. Esonanor (2014) LPELR-41137(CA)*; *Haruna & Anor v. Isah & Anor (2015) LPELR-25894(CA)*.

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

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

The quantum of damages will depend on the evidence of what the Claimant has suffered from the acts of the Defendant.

In the instant case, going through the entire gamut of the Claimant's case, there is no evidence of anything he actually suffered from the acts of the Defendant.

It is usual in cases such as this, where the Claimant has not shown that any particular loss was suffered, for the Court to award nominal damages. See: *Artra Industries (Nig.) Ltd. vs. N.B.C.I (1998) 4 NWLR (Pt.546) 357*; *Ogbechie vs. Onochie (1988) 4 NWLR (Pt.70) 370*.

In the event, I think the Claimant is only entitled to nominal damages.

On the claim for perpetual injunction, it is settled law that where damages are awarded for trespass, and there is an ancillary claim for injunction, the Court will grant perpetual injunction. This is the situation in the instant suit. The Court ought to grant the ancillary claim for injunction. See the following decisions on the point: *Obanor vs. Obanor (1976) 2 S.C.1*; *Ibafon Co. Ltd. vs. Nigerian Ports Plc. (2000) 8 NWLR (Pt.667) 86 at 102*; *Balogun vs. Agbesanwa(2001) 17 NWLR (Pt.741) 118*; and *Onabanjo vs. Efunpitan (1996) 7 NWLR (Pt.463) 756 at 760-761*.

On the whole, issue one is resolved in favour of the Claimant.

ISSUE TWO:

Whether the Defendant/Counter-Claimant has proved his counter-claim against the Claimant on the preponderance of evidence to warrant the judgment of this Court in his favour?

In his Counter-Claim, the Defendant counter-claimed against the Claimant seeking reliefs for declaration, damages and perpetual injunction. I am of the view that since I have made a finding under issue one that the land in dispute belongs to the Claimant, I cannot turn round to uphold the Defendant's counter claim in respect of the same land.

The law is that where the facts are intertwined and interwoven as regards a claimant's action and a defendant's counter claim, the success of the claimant's claim would mean the failure of the defendant's counter claim. See: *Aunam (Nig.) Ltd Vs UTC (Nig) Ltd (1995) 4 NWLR (Pt 392) 753, Unokan Enterprises Ltd Vs Omuvwie (2005) 1 NWLR (Pt. 907) 293, 315 at 316, Ago Vs Federal Mortgage Finance Ltd (2013) LPELR 22820(CA), Digital Security Technology Ltd Vs Andi (2017) LPELR 43446(CA), Ebibokofie Vs Tume (2018) LPELR 45620(CA), Iyua Vs Paul (2019) LPELR 47226(CA), Rikichi Vs Gambo (2019) LPELR 47676(CA).*

In view of the foregoing, I am of the view that it would be a worthless exercise to consider the merits of the Defendant's counter-claim at this stage. The counter-claim is deemed to have failed and it is accordingly dismissed. Issue 2 is therefore resolved in favour of the Claimant.

Having resolved the two issues for determination in favour of the Claimant, I hereby dismiss the Counter-Claim of the Defendant and grant the Claimant's Claims as follows:

- 1. A declaration of this Honourable Court that the Claimant is the proper person entitled to apply for and be granted right of occupancy in respect of the piece/parcel of land measuring approximately 120 feet by 70 feet lying, situate and being at Idumu-Eka Quarters, Efandion Uromi, an area within the jurisdiction of this Honourable Court;***
- 2. The sum of N500, 000 (Five Hundred Thousand Naira) only being general damages for acts of trespass by the defendant unto the said piece/parcel of land; and***

3. *An order or perpetual injunction restraining the defendant, his agents, servants, privies and workmen from further acts of incursion into the said piece/parcel of land.*

The sum of N100, 000.00 (One Hundred Thousand Naira) costs is awarded in favour of the Claimant.

Hon. Justice P.A. Akhiero

10/03/22

COUNSELS:

B.E.Emiowe Esq-----CLAIMANT/DEFENDANT TO COUNTER-CLAIM

Lucas Okojie Esq. -----DEFENDANT/COUNTER-CLAIMANT

