

**IN THE HIGH COURT OF JUSTICE**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,**  
**ON THURSDAY THE**  
**13<sup>TH</sup> DAY OF OCTOBER, 2022.**

**BETWEEN:**

**SUIT NO. B/1<sup>A</sup>/2022**

**1. IDURIASE ODUWARE** } -----APPELLANTS  
**2. MR. ANDREW ONABOR** }

**AND**

**MR. IDAHOSA TIMOTHY -----RESPONDENT**

**JUDGMENT**

This is an appeal against the ruling of the Area Customary Court sitting at Oredo, Benin City in respect of a preliminary objection to the suit on the grounds of lack of jurisdiction of the trial court.

The Court ruled against the Appellants and being dissatisfied with the ruling, the Appellants have appealed against the said ruling to this Court on the following ground:

*The learned trial judge erred in law when he held that the trial Court has jurisdiction to entertain the claim of the parties.*

**PARTICULARS OF ERRORS**

- 1. The Claim of the parties borders on a serious issue of title over the disputed parcel of land;**
- 2. The said parcel of land is in an urban area;**
- 3. Both the Respondent and the Appellant are laying divergent and conflicting claim over the parcel of land; and**

- 4. The High Court has jurisdiction to entertain the said divergent claims over a parcel of land in an urban area.***

The facts of this case are that the 1<sup>st</sup> Appellant and the Respondent are siblings. At the lower court, the Respondent filed a claim against the Appellants as follows:

- 1. A Declaration by this Honourable Court, that Mr. Timothy Idahosa is the Eldest surviving son of Late Mr. Timothy Efasuyi who died intestate in May 26<sup>th</sup> 1996;***
- 2. An Order of this Honourable Court, declaring that Mr. Idahosa Timothy haven performed his father's burial ceremony in conformity with Bini native laws and custom is the person entitled to inherit the Igiogbe of his late father which is No. 6, Owina Street, Uzebu Quarters, Benin City;***
- 3. A perpetual injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants by themselves, their Agents and/or Assigns and privies from parading themselves as person entitled to inherit the Igiogbe or from interfering with the Igiogbe without the permission, consent or authority of the plaintiff or its attorney/assign; and***
- 4. An order of this Honourable Court, nullifying, quashing or setting aside the decision contained in a purported document signed by the 2<sup>nd</sup> Defendant and others, dated March 8<sup>th</sup>, in which the 2<sup>nd</sup> Defendant purportedly vested the Igiogbe on the 1<sup>st</sup> Defendant as well as nullifying any other documents being paraded by the Defendants having similar effects of denying plaintiff his right to inherit the Igiogbe.***

At the lower court, the 1<sup>st</sup> Defendant/Appellant filed a Counterclaim against the Plaintiff/Respondent as follows:

- 1. A declaration by this Honourable Court that 1<sup>st</sup> Defendant/Counterclaimant is the owner by inheritance of the house known as No. 6, Owina Street, Off Ekehuan Road, Benin City;***
- 2. A perpetual injunction restraining the Plaintiff by himself, servants, agents and privies from parading himself (themselves) as the person(s) entitled to inherit the Igiogbe of MR. ODUWARE TIMOTHY and from further interfering with the management of the house known as No. 6, Owina Street, Off Ekehuan Road, Benin City without the permission, consent or authority of the 1<sup>st</sup> Defendant/Counterclaimant or his attorney;***
- 3. An order of court directing the Plaintiff/Defendant to counter-claim to account for and return all rents collected by the Plaintiff or his agent at N2000 per room in the 21 rooms to the 1<sup>st</sup> Defendant/counterclaimant from***

*January 1997 to December 2012 and N2,500.00 from January 2013 till judgment; and*

**4. Special and general damages of N300,000.00**

At the lower court, the parties led evidence to a point and the learned counsel for the Appellants raised the preliminary objection on the issue of jurisdiction. Arguments were heard and the court overruled the Appellants' counsel. This Appeal is against that Ruling.

In this Court, in accordance with the rules the learned counsel for the parties filed their Briefs of Argument which they adopted at the hearing of this Appeal.

In his Brief of Argument, the learned counsel for the Appellants, *E.O.Afolabi Esq.* formulated a sole issue for determination as follows:

***“Having regard to the crucial fact that the parties on record are contesting seriously the ownership and title to the property in an urban area located in Oredo Local Government Area and having regard to the existing law to wit Urban Area Designation Edict of Bendel State 1978 applicable to Edo State and the Land Use Act whether the lower court was right when it ruled that it has jurisdiction to entertain the matter filed by the parties.”***

Arguing the sole issue for determination, learned counsel submitted that it is settled law that a court can only assume jurisdiction when the subject matter is within its jurisdiction and he relied on the following decision on the point:

**1) *MADUKOLU V. NKEMDILIM (1962) 2JCC NLR 341***

**2) *OKONKWO V. FRN (2022) 8 NWLR (PT. 1833) 427 AT 449 – 450***

He posited that when a court has no jurisdiction to entertain a matter its decision must entirely be a nullity and he relied on the case of *OKONKWO v. FRN supra at page M. O. Muhammed at 452.*

Arguing further, learned counsel contended that the issue of jurisdiction is fundamental because it gives blood and backbone to the court and without it, the proceedings will be a nullity and he relied on the case of *CHEVRON (NIG) LTD. V. NWICHE & ORS. (2014) LPELR – 24291 CA.*

Counsel submitted that the claims of the parties bother on title to the land in dispute. He referred the court to the decision of the Apex Court in the case of *ERHUNMWUNSE V. EHANIRE (2003) LPELR – 1158SC* where the Court stated as follows;

***“Thus, a serious and fundamental issue of title to the property in dispute has arisen”. The determination of the Plaintiff/Respondent claim is dependent on the resolution of this issue of title. Unarguably, the Area Customary Court lacked the jurisdiction to adjudicate over title to land situate in an urban area the subject of***

***a statutory right of occupancy in respect of which the high court enjoys exclusive jurisdiction by virtue of section 39 (1) a of the Land Use Act...From the evidence adduced by the parties at the trial court, it was manifest that the ownership of the land in dispute was being vigorously contested***

Counsel contended that this is the same scenario in this appeal where the parties on record are contesting the ownership of the property in dispute and evidence has been led by the respondent which the Appellants are disputing having filed their counterclaim.

He posited that the Respondent cannot refute the crucial fact that the property is in an Urban Area and not in a rural area which fact the trial court accepted in the ruling. He submitted that the Urban Area Designation Edict 1978 which is an existing law states clearly that Oredo Local Government is an Urban Area and that properties therein are not subject to Customary Law.

Counsel posited that in the case of ***IKPA V. UPPER AREA COURT OTUKPO & ANOR (2020) LPELR 50233 CA*** the Court of Appeal stated that where a land is in an Urban Area, the Area Customary Court has no jurisdiction to entertain the said matter which only the high court can entertain. He submitted that the issue between the parties points clearly to the fact that title is in dispute since the Respondent is claiming perpetual injunction.

He also relied on the decision in the case of ***REGISTERED TRUSTEES OF THE APOSTOLIC FAITH MISSION & ANOR V. JAMES & ANOR (1987) LPELR 2946 SC*** where the Apex Court stated that since the Plaintiffs claimed perpetual injunction, they have put their title in issue before the court. Again he relied on the case of ***UDIH V. IDEMUDIA (1998) LPELR – 3296 SC*** where the Court stated that once a Defendant claims to be the owner of the land in dispute title to the land is in issue.

He also relied on the decision of my learned brother ***I. O. Omotoso J*** in ***Suit No. B/16A/2020 between Mr. John Igbini v. Joy Nosakhare Ighodaro delivered on 29/4/2022*** where the Court ruled that when the issue of title is raised and the land is in an Urban Area the Area Customary Court has no jurisdiction by virtue of ***the Urban Area Designation Edict of Bendel State 1978 as applicable to Edo State.***

In conclusion, he urged the Court to hold that the trial court lacks the requisite jurisdiction to entertain the matter and strike out the suit at the Area Customary Court, Oredo. He emphasized that the parties have the right to file their claim at the High Court and the parties will not lose anything.

In opposition to this Appeal, the learned counsel for the Respondent, ***A.O.Edeki Esq.*** filed his Respondent's brief of argument in which he formulated a sole issue for determination as follows:

**“WHETHER the lower court was right in holding that what is in issue in this claim was that of inheritance, not title and that it has jurisdiction?”**

Arguing the sole issue for determination, learned counsel conceded that the property in dispute is situate in Oredo Local Government Area which undoubtedly is an urban Area as classified by *S.39(1) of the Land Use Act 1978*. However he posited that a community reading of *Section 24(1) of the Land Use Act CAP L5, Laws of Federation 2004 and Section 20(1) item 5 of the 1<sup>st</sup> schedule of the Customary Courts Edict 1984* show clearly that the Area Customary Court is vested with unlimited jurisdiction in matters of inheritance upon intestacy under Customary Law.

Learned counsel posited that in this case the Respondent’s claim before the court and the Appellants’ counter-claim border on the right of inheritance of the intestate estate of the parties’ deceased father.

He posited that before the advent of front loading of depositions in the Customary Court, it was not possible to ascertain a Plaintiff’s claim but now with the filing of depositions, the claim of each party is ascertainable from the commencement of the case. He maintained that in the instant case, both parties are claiming to have a preferred right of inheritance and none of them is tendering any documents of purchase or title deed or claiming to have purchased earlier, hence the issue of title to land does not exist in this suit.

Learned counsel maintained that it is necessary to distinguish the cases of *EHANIRE VS. ERHUNWUSE (2003) LPELR – 1158 (SC)* and that of *IKPA VS. UPPER AREA COURT OTUKPO & ANOR. (2020) LPELR 50233 (CA)* cited by the Appellants’ Counsel from the instant case. He explained that in the two cases, the claims were founded on sale of lands in urban areas whereas the present case is on inheritance. He said that the aforesaid authorities are therefore not relevant here. He said that the Appellants are trying to over-emphasize the location of the subject matter of this action even where the issue involved is clear.

He posited that it is settled law that it is the substance of an action that determines what is in issue and he cited the case of *KWAMIN AKYIN VS. ESSIE EHYMAH (1936) 3 WACA*. Furthermore, he submitted that proceedings in the Customary Courts must be carefully scrutinized to ascertain the real issues raised hence it is permissible, not only to look at the Plaintiff’s claim before the Customary Court but also to study the depositions as contained in pages 15 – 40 of the Record of Appeal.

He posited that the Respondent being the 1<sup>st</sup> male child who has performed the final burial rites has the right of inheritance of the Igiogbe of his late father. He said that all these will assist the Court to identify the real issues between the parties in the Suit and he relied on the cases of *ERHUNESE VS. EHANIRE (1998)*

**LPELR, OLUJINLE VS. ADEAGBO (1988) 2 NWLR (PART 75) 238 AT 251; OSU VS. IGIRI (1998) NWLR (P.69) 221 PER IGUH JSC (PAGES 19 – 20 PARAGRAPHS E – B).**

Learned counsel relied heavily on the case of **LAMIDI ADEGOKE & ANOR. VS. SABALEMOTU SANNI ADESINA (2000) LPELR – 10186(CA)** where the Court exposted on the distinction between contest for title simpliciter and the right of inheritance among siblings.

Responding to the Appellants' submission that since the claim and counter-claim included a claim for injunction the claim automatically becomes that of title. He submitted that a claim for injunction is always an ancillary relief that cannot stand on its own and it is available to all sorts of claims including defamation, contracts etc, which do not relate to contest over land hence an injunction cannot convert a claim on inheritance to a contest over title to land.

He therefore urged the Court to hold that the ancillary claim for injunction has not converted the claim for inheritance into a contest over title and urged the Court to resolve the sole issue in the affirmative and uphold the Ruling that this is a matter of inheritance over which the Oredo Area Customary Court has jurisdiction.

Upon receipt of the Respondent's brief, the learned counsel for the Appellants filed a Reply Brief. In his Reply Brief, the learned counsel for the Appellants submitted that the issue formulated by the Respondent does not arise from the grounds of appeal filed by the Appellant that it is trite law that a Respondent who has no cross appeal has no business formulating issues for determination outside the grounds of appeal filed by the Appellant.

Learned counsel posited that the Respondent who has no cross appeal departed from the issue formulated by the Appellants and formulated an issue contrary to the issue formulated by the Appellants. He submitted that if the Respondent intend to depart from the issue formulated by the Appellants, he ought to file a cross appeal because the issue formulated by the Respondent does not arise from the grounds of appeal filed by the Appellants. He relied heavily on the case of ***BABATUNDE ALAKA AND ORS V. DR. SOLOMON NOSA OMORUYI AND ORS CA/B/220/2014*** delivered by the Court of appeal Benin Judicial Division on 10/05/2017 and submitted that the Respondent's arguments and the cases cited are in total disregard to the existing law to wit; land Use Act 1978 together with the Urban Area Designation Edict of Bendel State 1978 as applicable to Edo State and the Supreme Court decision in the case of ***ERHUNWUNSE v. EHANIRE (2003) LPELR-1158SC.***

Counsel vehemently contended that the issue of title is seriously in issue between the parties in this case and he relied on the case of ***UDIH v. IDEMUDIA (1998) LPELR-3296 SC*** where the Apex Court stated that once a Defendant claims to be the owner of the land in dispute as in this case and the other party disputed the

said ownership, title to the property is in issue which is the same as in the instant case where two parties are laying claim to ownership of the property in dispute.

Counsel further referred to the case of **AGBOOLA V. UBA PLC & ANOR (2011) LPELR 9353 SC** where the Apex Court affirmed that where a Plaintiff claimed for (i) declaration, (ii) damages and (iii) perpetual injunction title is in issue between the parties as in the instant case.

Again, he referred to the case of **DANJAMA V. TERENCE (2010) LPELR 4019 CA** where the Court of Appeal stated that once the respondent pleaded his root as inheritance as in the instant case and the appellant denied same, title is put in issue. He also relied on the following decisions on the point: **VINCENT ORJIAKOR & ANOR V. MRS. COMFORT MBACHU & ANOR (2019) LPELR 47713 CA-; APOSTOLIC FAITH MISSION & ANOR V JAMES & ANOR (1987) LPELR-2946SC.**

Counsel emphasized that the Appellants in the instant case through their counter claim are claiming, a declaratory relief, perpetual injunction and even damages which puts title in issue. He submitted that even though the Respondent is claiming his declaratory title through inheritance, so long as the land is in an urban area, by virtue of the Land Use Act 1978, the Area Customary Court will have no jurisdiction to entertain the matter and he referred to the decision of the Court of Appeal in **UGWUNNA & ANOR v. NWACHUKWU & ORS (2017) JELR -37849 CA or (2017) LPELR 42858CA.**

In the same vein, learned counsel tried to distinguish the case of **LAMIDI ADEJOKE & ANOR v. SABALEMOTU SANNA ADESINA (2000) LPELR-10186 (CA)** from the instant case on the grounds inter alia that *the claims of the parties in the instant appeal are not the same with the claims in the LAMIDI ADEGOKE & ANOR v. SABALEMOTU SANNA ADESINA supra.* He therefore submitted that the decision in **LAMIBI ADEGOKE & ANOR v. SABALEMOTU SANNA ADESINA supra** has no direct application to the facts of this case and the said decision made no reference to the Apex court's decision in **ERHUNWUNSE V. EHANIRE supra.**

He made some further marathon submissions on the same point and urged the Court to hold that the lower court lacks the jurisdiction to entertain the suit.

I have carefully gone through the evidence adduced at the trial court, the ruling of the court, the Grounds of Appeal and the Briefs of Argument of the learned counsel for the parties. I am of the view that the issues for determination as formulated by the learned counsel for the parties are quite similar and most germane to the just determination of this appeal. However, I will condense them together into a sole issue as follows:

***Whether the lower court was right when it ruled that it has jurisdiction to entertain the suit filed by the parties.***

It is settled law that what primarily confers jurisdiction on a Court of law is the statute that creates the Court and the subject matter of the suit. See the case of ***A.G. RIVERS STATE v. A.G. AKWA IBOM STATE (2011) LPELR - 633 (SC); and MAIFATA V. UPPER SHARIA COURT, KOFAR KUDU & ORS (2017) LPELR-45128(CA).***

Thus, in order to determine whether the Oredo Area Customary Court has jurisdiction in the instant case, the Claim and the Counter-Claim of the parties must be carefully examined to see if they come within the jurisdiction conferred on the Court by the relevant legislation. This in essence means that the enabling law vesting jurisdiction has to be taken into consideration in determining this issue of jurisdiction.

At the lower court, the Respondent filed a claim against the Appellants inter alia for a Declaration by this he is the eldest surviving son of Late Mr. Timothy Efasuyi who died intestate in May 26th 1996 and that having performed his father's burial ceremony in conformity with Bini native laws and custom, he is the person entitled to inherit the Igiogbe of his late father which is No. 6, Owina Street, Uzebu Quarters, Benin City. He is also seeking an injunctive order against the Appellants.

Also at the lower court, the 1st Appellant filed a Counterclaim against the Respondent also seeking inter alia, a declaration that he is the owner by inheritance of the house in dispute and a perpetual injunction restraining him.

Upon a careful examination of the substantive reliefs it is evident that the subject matter before the lower court is on customary law inheritance. In his brief of argument, the learned counsel for the Appellants has seriously contended that the matter before the lower court is on the declaration of title to land in Oredo Local Government Area which is an urban area and that the Area Customary Court has no jurisdiction to entertain a suit on declaration of title to land in an urban area. He cited the relevant provisions of the Land Use Act to buttress his point.

I must observe at this stage that it is common ground between the parties that the land in dispute is in an urban area.

In his response, the learned counsel for the Respondent relied heavily on the case of **LAMIDI ADEGOKE & ANOR. VS. SABALEMOTU SANNI ADESINA (2000) LPELR – 10186(CA)** which appears to be quite similar to the instant case. In the aforesaid case the Court of Appeal expounded as follows:

*“The record of proceedings in the trial court in this matter shows that it touches the issue of inheritance. Both Section 24(1) of the Land Use Act Cap. 202 of the Laws of the Federation of Nigeria 1990 and Section 20(1) of the Customary Courts Edict 1984 of the defunct Bendel State as applicable in Edo State appear to have provided for the type of Court which has jurisdiction on the issue of inheritance. Thus Section 24(1) of the Land Use Act reads: “The devolution of the rights of an occupier upon death shall in the case of a customary right of occupancy, unless non customary law or any other customary law applies, be regulated by the customary laws existing in the locality in which the land is situated; and Section 20(1) of the Customary Courts Edict 1984 reads: “The jurisdiction and power of a Customary Court in civil causes and matters shall be as set out in the first schedule to this Edict.” Item 5 of the first schedule vests the Area Customary Courts with Unlimited jurisdiction in matters of inheritance upon intestacy under customary law. In view of the foregoing provisions and in further view of the fact that the subject matter of the cause of action is the house of an intestate situate in Benin City in Edo State and subject to Bini Customary Law, it is apparent that Section 20(1) of the Customary Courts Edict 1984 of the defunct Bendel State as applicable in Edo State conferred jurisdiction only on the trial Customary Court at Iguobazuwa. In effect, the issue before the trial Customary Court was not on title to land but on inheritance thereby rendering the invocation of Section 39(1) of the Land Use Act irrelevant.” Per IBIYEYE, JCA (Pp. 10-13, paras D-A.*

Furthermore as the Court of Appeal pointed out in the case of **LAMIDI ADEGOKE & ANOR. VS. SABALEMOTU SANNI ADESINA** supra, in the Customary Court as in the instant case, is not enough to identify the true nature of the claim of the plaintiff. Recourse has to be had to the items of evidence adduced by both the plaintiff and the defendant in order to ascertain the basis of claim and in which Court such claim is tenable. The resultant effect of such in-depth consideration of the record of proceedings in the trial Court in this matter shows that it touches on inheritance.

I agree entirely with the learned counsel for the Respondent that there is a distinction between a contest for declaration of title and the determination of the right of inheritance among siblings. In the instant case, the contest between the parties is essentially on the right of inheritance of their deceased's father's property under Benin customary law. Going through the entire gamut of the Claims and Counter-Claim, there is no claim whatsoever for any declaration of title to the land in dispute. The pith and substance of the suit is on inheritance under Benin Customary law.

By virtue of *Section 20(1) of the Customary Courts Edict 1984 of the defunct Bendel State as applicable in Edo State*, the Oredo Area Customary Court is vested with the jurisdiction to hear and determine such matters.

In a plethora of cases, the superior appellate courts have consistently maintained that customary courts are vested with the jurisdiction to hear and determine matters on inheritance under customary law.

In the case of *AGBAJE & ORS V. ADELEKAN & ORS (1990) LPELR-228(SC) (PP. 15 PARAS. A)*, the apex Court held thus: *"By virtue of the provisions of Sections 18, 20 and 21 of the Customary Courts Law, Cap. 33 of the Laws of Oyo State, 1978, Customary Courts have the power to hear and determine causes and matters arising from inheritance which is governed by customary law."*

Again in the case of *JEROME V. JEROME & ANOR (2013) LPELR-21190(CA) (PP. 15-16 PARAS. F)*, the Court of Appeal restated the position thus:

*"As I earlier stated the substance of the dispute of the Customary Court is a dispute over intestate property of the father of the appellant and 1st respondent. They are brothers fighting over inheritance, and that is the heart or pith of their dispute. Having found as such, I hold the view that the Customary Court has jurisdiction over the subject matter of the dispute between the parties of the said Court. All I am saying is that the Court below was right when it held of page 185 of the Record that -Having regard to the subject matter in Exhibit TU. 2 and the provisions of Section 6(1) of the Customary Court Law cap 4, Laws of Rivers State 1999, I hold the firm view that 2nd Respondent has jurisdiction to hear and determine Suit No ACC/56/2007 pending before it. The ground of lack of jurisdiction as raised in this application therefore fails."*

On the contention of the learned counsel for the Appellants that since the claim and counter-claim included a claim for injunction the claim automatically becomes that of title, I am in agreement with the submission of the learned counsel for the Respondent that a claim for injunction is merely an ancillary relief which is available to all sorts of claims including defamation, contracts, inheritance etc, .

*From the foregoing, it is clear that the lower court was right when it ruled that it has jurisdiction to entertain the suit filed by the parties. The sole issue for determination is resolved in favour of the Respondent. This appeal is accordingly dismissed with N100, 000.00 (One Hundred Naira) costs in favour of the Respondent.*

**P.A.AKHIHIRO**  
**JUDGE**  
**13/10/2022**

**COUNSEL:**

**E.O. AFOLABI ESQ-----APPELLANTS**

**A.O. EDEKI ESQ-----RESPONDENT**

