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.AKHIHIERO,
ON THURSDAY THE 20TH
DAY OF OCTOBER, 2022

BETWEEN: ***SUIT NO. HCU/33/2018***

MR. FRIDAY ESEZOBOR----------CLAIMANT

AND

1. ***MR. ODION STEPHEN EMOWELE***
2. ***AKHERE STEPHEN EMIOWELE*** } ***DEFENDANTS***

JUDGMENT

By his Amended Statement of Claim, the Claimant claimed against the Defendants jointly and severally as follows:

1. ***A Declaration that the Claimant is the person entitled to apply and be granted a Statutory Right of Occupancy over that piece or parcel of land measuring approximately 80feet by 144feet lying, situate and being behind our Lady of Lourds Girls Grammar School Compound, Idigun Quarters, Ewoyi-Uromi having boundaries with the lands of Samuel Elimian by the left hand side, Godwin Ebeni by the right hand side, Augustine Ihongbe by the back hand side and Access Road at the front hand side. The said land the parties to this action know very well.***
2. ***An Order of perpetual injunction restraining the Defendants their agents, privies, servants, workmen or any other person claiming from or in trust from them from further entering the said piece or parcel of land.***
3. ***The sum of four million eight hundred thousand naira (N4, 800,000.00) being special and general damages for trespass and the economic crops such as mangoes, pears and palm trees belonging to the Claimant which the Defendants have destroyed.***

In proof of his case, the Claimant testified and called three witnesses while the 1st Defendant testified and called three witnesses.

The Claimant's case is that one Esezobor Omijie now deceased was the owner of the land in dispute which he inherited from his late father, Pa. Omijie after performing his father's burial ceremonies according to Esan native law and custom; his late father having inherited the land from his own late father, Pa. Uawa after performing his burial ceremonies according to Esan native law and custom. The said Uawa allegedly inherited the land from his own late father Pa. Ijemere, who was the founder of Idigun Village including the land in dispute.

The Claimant led evidence of how he gave part of his land to some people including the late 1st Defendant. He tendered exhibit "A" to show that he gave part of his land to people without let or hindrance.

According to the Claimant, sometime in April, 2018, the Defendants without his consent entered his land, cleared and uprooted two mangoes trees, two palm trees, one pear tree and started marking the land in preparation for building. That is why this suit was instituted against them. In the course of the hearing, the original Claimant died and he was substituted by his son who is the present Claimant.

In defence to this suit, the Defendants led evidence. The 1st Defendant testified and they called three witnesses. According to the Defendants, the 1st Defendant is the owner of the land in which he said he inherited from his late father, Stephen Odiata Emiowele.

According to the Defendants, the land in dispute is situate at Idigun-Ebhoiyi, Uromi, and measuring 150ft by 80ft a part of, being a larger part of land belonging to their family.

They alleged that both the Claimant and they are descendants of the late Ijiemere who lived and deforested a large parcel of land including the land in dispute over 800 (Eight Hundred years ago). That while Ijiemere was alive, he had very many children including Uawa, Aneni and Ikpoba who have their separate quarters at Idigun-Ebhoiyi, Uromi.

They alleged that in their lifetime, the Claimant's great grandfather had his family and personal estate, while Odiata the Defendant's great grandfather also had his household settled on his own land which was exclusively owned by him.

That upon Odiata's death, his eldest surviving son called Emiowele succeeded him and also inherited his property including the land in dispute. The said Emiowele allegedly exercised possession and ownership over the land by farming on it without let or hindrance from anybody including the Claimant or his late father. He also used the land to secure a loan from one late Ikpea Akhigbe in 1975.

They alleged that the Claimant's father facilitated the loan transaction having confirmed the ownership of the said Emiowele. That when he could not pay back the loan and the son sought forfeiture, he forfeited the land to Mr. Ikpea Akhigbe

represented by his son. In the course of the hearing, the original 1st Defendant died and he was substituted by his son who is the present 1st Defendant.

At the close of the Defendants' 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.***, formulated the following issues for determination:

1. ***The Claimant having encouraged or facilitated the use of the parcel of land by the Defendant to use the land to obtain a loan, is he not estopped from further laying claim of ownership to the land?***
2. ***Has the Claimant any further right of ownership over the land, having earlier-on admitted to an Ebhoiyi Elders' Council that the Defendant owned the land.***
3. ***Is the Claimant not also ruled or agreed by his own conduct that the Defendant owned the land by not timeously objecting to the ruling of the Native Arbitration to which he voluntarily submitted to?***

Arguing the issues together, learned counsel submitted that the Claimant has failed to prove his case on the preponderance of evidence to enable him get judgment.

He posited that both the Claimant and the Defendants claim their ancestry to the same source while the Claimant particularly hinged his claim on his being an OYAEBHO (head of an extended family of same grandparents), which made him believe spuriously that by virtue of parading himself in the aforementioned title, he is the owner of all lands within his reach. He submitted that an Oyaebho only connote the Head or Eldest person in an extended family structure and nothing more.

Furthermore, he submitted that the eldest surviving son of a deceased land owner can inherit his late father's property after performing the necessary burial rites of his late father in accordance with the Uromi people. He said that properties, including land can but only be inherited to the exclusion of any other person's property within the family lineage.

He posited that the Claimant can only lay ownership claim to the biological father's land and no more. He cannot lay claim to somebody else's property except those of his late father.

According to him, the Claimant asserts that the Defendant's father though of the same parent with his father, did not perform their late father's final burial rites, which the Claimant's father later performed. He said that the Claimant did not establish the fact that the Defendant's father had no personal property during his

lifetime which could be owned or inherited through customary inheritance by the Defendant.

He said that the Claimant also failed to show how he acquired his property when the Defendant's father was alive and whether he was old enough. That in his bid to establish acts of possession, the Claimant alleged that he gifted several parcels of parts of the land in dispute to some other persons such as Arebun and Elimain but he did not call any of them to corroborate his claim nor give any reason for failing to call them. He maintained that Exhibits A and B are fictitious Deeds of transfer of land. That the Claimant did not make Exhibit A as he did not sign it and that Exhibit B is said to have been made in 1960 which he did not plead.

He urged the Court to reject the Documents because the obvious discrepancies in the said documents were not reconciled since they are fraudulent. He further urged the Court to discountenance the entire evidence they tend to support as facts not pleaded cannot be accepted or allowed in evidence, as it must be consistent with pleadings. He maintained that the documents are of doubtful validity and should not be admissible and relied on the following decisions: ***Uchendu V Ogboni (1999) 5 NWLR (Part 603) 337. See also SPDCN V Amadi (2010) 13 NWLR (Pt. 1210) 82 CA and Bayo V Njida (2004) 8 NWLR (Pt 876) 544.***

Counsel posited that both the 1st Defendant and the Claimant on more than one occasion appeared before the Ebhoiyi Council of Elders, a Council of Elders they both belong to. That the first occasion was when a certain late Ikpea took mortgage of the land the subject matter of this suit. That on that occasion, it is in evidence by DW 1 and DW2 that the Claimant assertively testified that the 1st Defendant owned the land. That at a later date just before this suit was filed, the Claimant further maintained that the 1st Defendant owned the land while physically present on the land to show the Ebhoiyi Elders' delegates the land in dispute as belonging to the 1st Defendant. He said that the Claimant cannot be allowed to approbate and reprobate, as he caught up with the Doctrine of Estoppel. He relied on the cases of ***Ude V Usoji (1990) 5 NWLR (Pt 151) at 488*** and ***Gombe V Gombe (1951)1 All ER at 770.***

He posited that the DW2 claimed that based on the evidence or disclosure of the Claimant that the 1st Defendant owned the land in dispute, the Ebhoiyi Council of Elders decided that the land belongs to the 1st Defendant and the Claimant never raised any objection to that decision. He said that both the claimant and 1st Defendant voluntarily appeared before the Ebhoiyi Elders Council for the said arbitration.

Counsel submitted that the requirements for the validity of a native arbitration were aptly enumerated in the case of ***NJOKU V Ikeogha (1972) ECSLR 199*** where it was held that, where a body of men, be they Chiefs or otherwise act as Arbitrators

over disputes between two parties their decision shall have a binding effect if it is shown firstly that both parties submitted to the arbitration.

Second, that the parties accepted the terms of the arbitration and third that, the parties agreed to be bound by the said decision. He said that such a decision is said to have the same authority as the judgment of a judicial body and will be binding on the parties and thus create "estoppel". See ***AGU V Ikewibe (1991) 3 NWLR (Pt 180) 385, (1991) NSCC 385.***

In the light of the foregoing he concluded that the Claimant is bound by the decision of the arbitration.

In conclusion, learned counsel submitted that on the imaginary scale and on the balance of probability the evidence of the Defendant outweighs that of the Claimant and he urged the Court to dismiss the case of the Claimant.

In his final written address, the learned counsel for the Claimant, ***Alhaji A.O. Yusuf*** formulated the following two issues for determination which he argued seriatim:

1. ***Which of the parties in this case has made out a case of better title to the land in dispute; and***
2. ***Whether the Claimant is entitled to the reliefs sought in this case.***

ISSUE 1:

Which of the parties in this case has made out a case of better title to the land in dispute.

Arguing this issue, learned counsel submitted that a Claimant seeking a declaration of title must succeed on the strength of his case and not on the weakness of the defence and he cited the case of ***Fagbemi vs Aigbe (1985) 3 sc 28 at 72-74.***

He submitted that in proving title to land, the Claimant must prove any of the five ways enumerated by the Supreme Court in the case of ***Idundun vs Okumagba (1976) 9-10sc 227***

He submitted that a party who relies on traditional history or evidence to prove his title must plead and prove who founded the land and give particulars of the intervening owners before it reaches him. See the cases of ***(1) Lanre Odubote vs Mrs. E.O. Layem (2013) 8WRN 142 (2) Nrumah vs Ebuzoeme (2013) LPELR 1971 SC (3) Dike vs Okolo-Edo (1999) 7 sc part III of 135.***

He posited that in this case, the Claimant pleaded and gave evidence of his traditional history on the land in dispute. That he also pleaded and gave evidence on the founder of the land in dispute and the intervening owners until it reached him.
He referred to paragraph 5 and 6 of the Amended Statement of Claim, where the Claimant pleaded as follows:-

Paragraph 5

"The Claimant avers that for many centuries ago, his great grandfather, Pa. Ijemere deforested a large piece or parcel of land situate at Idigun, Ewoyi, Uromi in which the piece or parcel of land now in dispute form a part. The said piece or parcel of land was inherited from Ijemere by Uawa, the first son after performing the burial ceremonies according to Esan native law and custom.

He referred to ***Paragraph 8*** where he pleaded thus: ***"the claimant avers that Omijie his father who was the second son of Uawa performed the burial ceremonies of his father, Uawa according to Esan native law and custom and inherited the properties of their father including the land in dispute.***

Again he referred to ***Paragraph 12***, where the Claimant pleaded as follows:- ***"The Claimant avers that he was the first son of Omijie and on the death of his father, he performed the burial ceremonies and inherited his father's properties including the land in dispute" in paragraph 15, "the Claimant avers that the land in dispute forms part of the larger piece or parcel of land he inherited from his late father, Pa. Omijie after performing his burial ceremonies as the senior son according to Esan native law and custom.***

Counsel submitted that from the pleadings of the parties, the Claimant has been able to trace his root of title to Ijemere the founder of Idigun village through to himself and he referred to paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 13 and 14 of the Claimants Statement on oath. However, he said that the Defendants were not able to trace the ownership of the land to Ijemere, the founder of Idigun Village.

He submitted that the 1st Defendant pleadings and evidence of his root of title is confusing and conflicting. That in paragraph 7 of the joint statement of Defense, the Defendants pleaded as follows: "that for over 6 centuries a period within the Defendant's father had been in possession of this parcel of land, part of which is now in dispute and subject matter of this suit, no person including the claimant's late father through whom he now makes this spurious claim, ever disputed ownership with the Defendant or his father or grandfather". In paragraph 10 of the joint statement of defence, the Defendants pleaded as follows: "That long before 4 or 5 centuries ago, the direct progenitor of the 1st Defendant named Anetor and his land, farm and home on a parcel of land living on same with his family until his demise after which his eldest son Odiata succeeded him while the 1st Defendant who is also Odiata's eldest son succeeded his father. Also see paragraphs 7, 8 and 9 of 1st Defendant statement on oath.

He submitted that placing the Claimant and the Defendants' evidence on an imaginary scale that of the Claimant is weightier. The case of the Defendant is confusing and conflicting. For example, the Defendants in their pleadings and statements on oath, stated that Ijemere was the founder of Idigun Village where the land in dispute is. They went further to state that the Claimants and the Defendants lineage is Odogbe Quarters in Idigun – Ebhoyi Uromi and it is made up of six

homesteads which include (1) Inegbene khian (2) Odiata (3) Elimian (4) Ebhohimen (5) Okoduwa and (6) Oaikhana and that the Defendants belong to the Odiata. See paragraph 6 of the joint statement of defence. In paragraph 7 of the joint statement of defence, the defendants avers that "these separate but brother homesteads had existed and lived on their separate distinct parcels of land for over six (6) century without any particular brother homestead lording the right of exclusive ownership over the land settled upon by the other brother homestead".

He said that in paragraph 8 of the joint statement of Defence, the Defendants pleaded thus:- "that it is not in doubt that amongst these brother quarters or homesteads, the Claimants lineage is the head, the grandfather ***living succeeded to the headship of Odogbe-Idigun Quarters a position the six inherited but is the exclusion of the private properties of other members of the extended family" see paragraphs 5, 6 and 7 of the 1st Defendant's statement on oath. Of particular interest is paragraph 7 of the 1st Defendant Statement on Oath where he stated as follows" – "That while the claimant's grandfather had his family and personal estate, Odiata who is my grandfather had his household and children settled on his own land which was exclusively owned by him and at Odiata's death, his eldest surviving son called Emowele (myself) also succeeded him and also inherited his prosperity which include the land in dispute.***

He said that the questions that have arisen are: ***"where is the 1st Defendant tracing his root of title to? Having agreed that the claimant and the defendants belong to the same Odogbe Quarters and that the Claimant and the Defendants ancestor are traced to Uawa branch of Ijemere family and that the claimant father was the head of the family how come the 1st Defendant's grandfather, Odiata became the owner of the land in dispute which the 1st Defendant said he inherited from Odiata?***

He submitted that in all these, the Defendants case is most confusing as to their root of title to the land in dispute, when compared to the Claimant's case which is straight to the point.

He said that weighing the Claimant's case based on inheritance under Esan native law and custom, he urged the Court to prefer the case of the Claimant to that of the Defendants and decree a declaration of title in favour of the Claimant.

He submitted that where a person traces his root of title to a particular person or source, he must establish it. If it has been put in issue he must go further to prove the origin of the title of that Community, person family. He cannot ignore the proof of his grantor's root of title and concentrate only on his own title and he cited the case of ***Group Captain Ogah (Rtd) vs Mallam Garba Ali (1993) (NWLR part 27 and 41.***

Learned counsel submitted that in this case, the Claimant was able to trace his root of title to Ijemere, the founder of Idigun Quarters as follows:-

1. Ijemere – founder
2. Uawa – inherited from Ijemere
3. Omijie – inherited from Uawa
4. Esezobor – inherited from Omijie
5. Friday Esezobor who now stepped into the shoes of Esezobor.

He submitted that under Esan native law and custom, the first surviving son of a deceased man inherits his father's properties to the exclusion of the other children. That the right of inheritance under Esan native law and custom is not automatic. That the right only arises after the performance of the burial ceremonies.

He said that the Claimant pleaded and gave evidence that after the death of Uawa, his first surviving son in the person of Abhulimen, could not perform his burial ceremonies and Omijie the late Claimant's father performed Uawa's burial ceremonies and inherited his (Uawa) properties including the land in dispute. He said that the Defendants agreed with the Claimant in their paragraph 8 of the joint Statement of Defence and paragraph 6 of the 1st Defendant Statement on Oath.

He urged the Court to hold that the Claimant has been able to trace his root of title to the founder of the land in dispute through inheritance under Esan native law.

He submitted that the parties know the land in dispute but only gave different measurements. He submitted that the law is that once the parties know the land in dispute whether they call it different names or give different measurements, an injunction can issue. See the case of ***Makanjuola vs Balagun (1989) 3 NWLR part 108 at 204.***

He submitted that in this case, the parties know the land in dispute, therefore, an injunction can issue as the dimension or the identity of the land was not an issue in the case.

He submitted that though the Claimant relied on traditional history to prove his title to the land in dispute, he also relied on acts of possession and enjoyment of the land. He said that the Claimant in paragraph 16 of the amended Statement of Claim pleaded that on or about the year 2010, he asked his son, Mr. Friday Esezobor to use the land for farming. Furthermore that in paragraph 17 of the amended statement of claim, he pleaded that he gave or sold portions to the following people:-

1) The 1st Defendant
2) Monday Odiata
3) Samuel Elimian
4) Monday Elimian
5) Anthony Elimian
6) Godwin Elimian, etc

He said that the Claimant tendered exhibit "A" the deed of Transfer of a portion of land to one Monday Elimian. That in paragraph 14 of the Joint statement of Defence the Defendants pleaded that the Claimant blackmailed Monday Elimian and Samuel Elimian to agree that he gave them land for peace to reign. He also referred to paragraph 15 of the Statement of Defence and paragraphs 22, 23, 24 and 25 of the 1st Defendant's statement on Oath and submitted that these paragraphs support the case of the claimant of selling and giving portions of his land to people which is an act of positive possession.

He urged the Court to believe the evidence of the Claimant that he gave and sold land to people including the 1st Defendant.

Furthermore, he posited that in his evidence, the DWI testified order cross examination that the land before the disputed land has a building which belongs to the Claimant and after the building is the 1st defendant building where he built his house but he did not know how the 1st Defendant acquired the land. This witness went on to state in another breadth that the 1st Defendant house where he is living is not in the land in dispute.

He submitted that the evidence of this witness more or less supported the Claimant's case that he gave the land where the 1st Defendant built his house to him. Also, he posited that in his evidence under cross examination, the 1st Defendant confirmed that he knows the houses of Samuel Elimian, Monday Elimian, Anthony Elimian who all have the houses in the land in dispute but denied that it was the Claimant that gave them lands.

He submitted that the denial by the 1st Defendant that it was not the Claimant that gave Samuel Elimian, Monday Elimian and Anthony Elimian land is contrary to his averments in paragraphs 14 and 15 of the joint statement of Defence where they averred that Monday Elimian and Samuel Elimian were blackmailed in accepting that the Claimant sold or gave them land for peace to reign.

He submitted that the law is that selling, leasing or giving of land to another is an act of possession. That the claimant led evidence as per exhibit "A" that he gave land to persons including Monday Elimian as shown in exhibit "A". He urged the Court to disbelieve the evidence of the 1st Defendant and his witnesses that the 1st Defendant used the land in dispute as mortgage property on the following grounds:-

I) If the 1st Defendant used the land in dispute as security which he forfeited to Mr Ikpea, 1st Defendant should not have gone back to the land again as his land.

II) The DW2 testified under cross examination that the council of Elders of Ebhoyi village decided and asked the 1st Defendant to leave the land for Mr. Ikpea Akhigbe and Odiata lost the land to Ikpea.

III) The 1st Defendant went back to the same land with the 2nd and 3rd Defendants to cut the cash crops there claiming that the land is his own.

IV) Under cross examination the 1st Defendant said that the land is his own. Again, in his evidence under cross examination, the DW2 stated that Esezobor and Odiata were also quarreling over a parcel of land at Idigun and that the council of Elders sent people to see the land and it was the same land 1st Defendant and Akhigbe brought before the council of Elder for adjudication which was resolved against the 1st Defendant.

He submitted that it runs contrary to adjudicatory process for a land that has been adjudged not to belong to the 1st Defendant when he had dispute with Mr. Ikpea Akhigbe to be adjudicated in his favour against the Claimant herein thereafter.

Finally he urged the Court to hold that the Claimant has established a better title to the land in dispute and a declaration of his entitlement to a Statutory Right of Occupancy should be so decreed.

ISSUE 2:

Whether the Claimant is entitled to the reliefs sought in this case

On this issue, learned counsel submitted that trespass is the wrongful act against possession and anybody in possession can maintain an action in trespass against a wrong doer except the true owner.

He posited that in this case, the 1st Defendant under cross examination admitted that, the 2nd and 3rd Defendants cut the cash crops on the land in dispute.

He submitted that once the Claimant is adjudged to be the owner of the land in dispute, the Defendants are trespassers to the Claimant's land. He urged the Court to condemn the Defendants in damages for destroying the claimant's cash crops worth N800, 000.00 and general damages for trespass of N4, 000,000.00.

On the issue of injunction, he submitted that once trespass has been established, injunction follows. That in this case, the 1st Defendant admitted that the 2nd and 3rd Defendant entered the land in dispute and cut down the economic trees.

He therefore urged the Court to restrain the Defendants from further trespassing on the claimant's land now and allow the Claimant's claims in its entirety.

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 as follows:

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

I will now proceed to resolve the sole issue.

ISSUE:

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

It is settled law that 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 Eyiyola (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 pleaded and gave evidence that the original founder of the land was one Ijemere. Upon the death of Ijemere, his eldest son Uawa buried him according to Esan native law and custom and inherited the land. Upon the death of Uawa, his first surviving son in the person

of Abhulimen, could not perform his burial ceremonies and Omijie the late Claimant's father performed Uawa's burial ceremonies and inherited his (Uawa) properties including the land in dispute. Upon the demise of Omijie, his eldest son Esezobor buried him and inherited the land. The said Esezobor instituted this suit against the Defendants and when he died in the course of this proceedings, his son Friday Esezobor stepped into his shoes in this suit.

Incidentally, the Defendants are also relying on evidence of traditional history to establish the 1st Defendant's title to the land in dispute. According to the Defendants' evidence of traditional history, both the Claimant and they are descendants of the late Ijiemere who deforested a large parcel of land including the land in dispute over 800 (Eight Hundred years ago). They alleged that in his life time, Ijiemere had very many children including Uawa, Aneni and Ikpoba who had their separate quarters at Idigun-Ebhoiyi, Uromi.

They alleged that in their lifetime, the Claimant's great grandfather had his family and personal estate, while Odiata the Defendant's great grandfather also had his household settled on his own land which was exclusively owned by him.

That upon Odiata's death, his eldest surviving son called Emiowele succeeded him and also inherited his property including the land in dispute. They alleged that said Emiowele exercised possession and ownership over the land by farming on it without let or hindrance from anybody and he used the land to secure a loan from one late Ikpea Akhigbe in 1975.

They alleged that the Claimant's father facilitated the loan transaction having confirmed the ownership of the said Emiowele. That when Emiowele could not pay back the loan, he forfeited the land to Mr. Ikpea Akhigbe represented by his son.

Clearly, there is a conflict in the evidence of the traditional history of the parties. At this stage it will be necessary to juxtapose the evidence of the Claimant with that of the Defendants in other to determine the issue of credibility.

Upon a careful examination of the traditional history of the parties, the Defendants' traditional history appears to be rather haphazard. Their evidence did not show an unbroken line of inheritance from Ijemere to the 1st Defendant. Most disturbing is the aspect of the alleged mortgage of the land to the said Akhigbe Ikpea.

According to the Defendants, the 1st Defendant used the land in dispute as security which he forfeited to Mr Ikpea. When the matter was brought before the council of Elders of Ebhoyi village, it was alleged that the council decided that the 1st Defendant should leave the land for Mr. Ikpea Akhigbe. Essentially, he lost the land to Mr. Ikpea Akhigbe as a result of that loan transaction. I agree with the learned counsel for the Claimant that the 1st Defendant cannot blow hot and cold by alleging in one breath that he lost the land to Ikpea Akhigbe and maintain in this suit that the land still belongs to him.

Juxtaposed with the evidence of the Defendants, the traditional evidence of the Claimant appears more consistent and credible. The Claimant led evidence of an unbroken line of succession and inheritance of the land in dispute from the time of deforestation by his ancestor Pa Ijemere to when his late father inherited the land. The Claimant's root of title was further reinforced by the transfer of part of the land by the Claimant's late father to one Monday Elimian as evidenced in the Deed of Transfer admitted in evidence as Exhibit A at the trial.

From the foregoing, I am of the view that the evidence adduced by the Claimant is more credible than that of the Defendants which appears highly incredible and unreliable. I hold that the Claimant has established his title through credible evidence of the traditional history of the land.

I will now 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.

On acts of ownership and long possession of the land, the Claimant led unchallenged evidence to prove that since his forebears acquired the land, they have been in undisturbed possession of the land until the Defendants trespassed into the land. The evidence of the transfer of part of the land by the Claimant's late father to Monday Elimian as evidenced in Exhibit A is proof of the Claimant's possession. From the uncontroverted evidence of the Claimant, I hold that the Claimant has been in exclusive possession of the land. This evidence of possession is one of the ways of proving title to land. See ***Section 35 of the Evidence Act, 2011*** and the case of ***Alikor vs. Ogwo (2010) 5 NWLR (Pt.1187) 281 at 312.***

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

The Claimant is seeking the sum of four million eight hundred thousand naira (N4, 800,000.00) being special and general damages for trespass and destruction of sum economic crops by the Defendants.

It is settled law that special damages must be strictly proved. Expositing on the meaning of strict proof of special damages in the case of ***OGUNTADE & ANOR V. OGUN (2021) LPELR-52895(CA) (PP. 27-28 PARAS. F-F)***, the Court of Appeal stated thus:

"There is no general rule as to what amount to strict proof. All that is required is proof to the satisfaction of the Court. It is not in all cases that documents or receipts of purchase are required to prove the items claimed under special damages."

Again, while shedding light on what constitutes strict proof of special damages, the Supreme Court per ***Tobi JSC*** held in the case of ***G.F.K. INVESTMENT NIGERIA LIMITED VS. NIGERIAN TELECOMMUNICATIONS PLC (2009) 15 NWLR (PT. 1164) 344 AT 371 - 372 PARAS H - C***, as follows:

"It is elementary law that special damages, unlike general damages must be proved to the hilt. Damages being special must be specially proved to the satisfaction of the Court. Although, it is most desirable to prove special damages by the production of receipts and the like, failure on the part of the Plaintiff to do so in certain circumstances will not defeat the claim of special damages. This is because there are certain trades or transactions that do not readily give rise to issuance of receipts and Court of law should not insist on receipts in such cases. Where the law insists on the production of receipts in all claims of special damages, the law will be unwittingly promoting the offence of forgery because a party who has no receipt will be tempted to forge one. That is not good in the administration of justice."

In the instant case, the Claimant is claiming the sum of N800, 000.00 (Eight Hundred Thousand Naira) as special damages. In the pleadings and the evidence the Claimant particularized the sum as follows:

i) ***2 Mature mangoes trees with a life span of 50 years at N3,000.00 per year----------N150,000.00***
ii) ***2 Mature palm trees with a life span of 50 years at N5,000.00 per year----------N250,000.00***
iii) ***1 big pear tree with a life span of 40 years at N10,000.00 per year----------N400,000.00***

Total----------N800, 000.00

I am of the view that communal farming is one of such trades or transactions that do not readily give rise to issuance of receipts. It will be difficult to issue receipts in respect of the items of special damages particularised above. In the event, in the absence of any challenge from the Defendants on the value of the aforesaid items, I hold that the Claimant has sufficiently proved the items of special damages and is entitled to the award of N800,000.00 (Eight Hundred Thousand Naira) as special damages.

On the claim of N4000, 000.00 as general damages for the Defendants' 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. OGHENEOVO (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. Okwuraiwe & Ors (1978) LPELR-3378(SC); Osuji & Anor v. Isiocha (1989) LPELR-2815(SC); Adamu v. Esonanjor (2014) LPELR-41137(CA); Haruna & Anor v. Isah & Anor (2015) LPELR-25894(CA)***.

Furthermore, the point must be made that an award for special damages, will not be a bar to award of general damages depending on the circumstances as shown in each case. There is therefore, no general rule of law that once special damages claim succeeds, which must be specifically pleaded and strictly proved, then a claim in general damages must fail. Thus, a Court can, where the proved facts and circumstances justifies and or warrants it, award general damages consecutively with special damages as strictly proved by the party. See ***UBN Plc V. Ajabule (2011) 18 NLWR (Pt. 1278) 152 @ p. 181; British Airways V. Atoyebi (2014) JELR - 36540 (SC).***

In the instant case where the Defendants have subjected the Claimant to a protracted litigation in other to assert his right, I think he is entitled to some reasonable compensation for all the trouble he has been through as a result of the Defendants' acts of trespass.

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 a perpetual injunction to prevent any further trespass. This is the situation in the instant suit. 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, I hold that the sole issue for determination is resolved in favour of the Claimant and judgment is entered in favour of the Claimant as follows:

1. ***A Declaration that the Claimant is the person entitled to apply and be granted a Statutory Right of Occupancy over that piece or parcel of land measuring approximately 80feet by 144feet lying, situate and being behind***

our Lady of Lourds Girls Grammar School Compound, Idigun Quarters, Ewoyi-Uromi having boundaries with the lands of Samuel Elimian by the left hand side, Godwin Ebeni by the right hand side, Augustine Ihongbe by the back hand side and Access Road at the front hand side. The said land the parties to this action know very well;

2. ***An Order of perpetual injunction restraining the Defendants their agents, privies, servants, workmen or any other person claiming from or in trust from them from further entering the said piece or parcel of land; and***
3. ***The sum of two million eight hundred thousand naira (N2, 800,000.00) being special and general damages for trespass and the economic crops such as mangoes, pears and palm trees belonging to the Claimant which the Defendants have destroyed.***

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

Hon. Justice P.A. Akhihiero
20/10/22

<u>COUNSELS:</u>
Alhaji A.O.Yusuf----------CLAIMANT
Lucas Okojie Esq. ----------DEFENDANTS