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
4TH DAY OF AUGUST, 2022.

BETWEEN: ***SUIT NO: HCU/62/2012***

1. ***MR. AKHERE OKOSUN***
2. ***MR. MATTHEW ADAGHE***
3. ***MR. AUSTINE EIMUNJEZE ----------CLAIMANTS***
   (Suing for themselves and on behalf of Egbele Community of Uromi)

AND

FIDELIS OKOSUN ----------DEFENDANT

JUDGMENT

The Claimants instituted this suit *vide* a Writ of Summons and Statement of Claim filed on 12th day of October, 2012 seeking declarative and injunctive orders as well as damages for trespass against the Defendant. However the operative Statement of Claim is the 1st Further Amended Statement of Claim dated 14/12/2018 but deemed filed on 21/2019. The Defendant's extant pleading is the Further Amended Statement of Defence dated 22/1/2020.

The Claimants in a bid to prove their case testified for themselves and called four witnesses.

By the Claimants' 1st Further Amended Statement of Claim, the Claimants claimed against the Defendant as follows:

1. A declaration of this Honourable Court that the claimants acting for themselves and on behalf of the Egbele Community of Uromi, are the proper

persons entitled to apply for and be granted statutory rights of occupancy on behalf of the Egbele Community in respect of all that expanse of land measuring approximately 1000 acres, lying being and situate at Odegbo, Egbele Uromi.

2. A perpetual injunction restraining the defendant, his agents, servants, privies and or workmen from further encroaching unto the said expanse of land without the consent and authority of the claimants' community.

The Claimants in a bid to prove their case testified for themselves and called four witnesses. From the evidence led at the trial, the Claimants' case is that they are natives of Egbele Community in Uromi, while the Defendant is a native of Ujabhole Village in Irrua.

The Claimants allegedly instituted the action for and behalf of the Egbele Community of Uromi.

According to the Claimants, the Egbele Community is the owner of the land in dispute measuring approximately 1000 acres of land lying and situate at Odegbo farm bush, Egbele, Uromi, particularly described in litigation Survey Plan No. JAA/ED/D18/2018 dated 20/11/2018 made by registered surveyor J.O.D. They tendered the survey plan which was admitted as Exhibit "D" at the trial.

At the trial the Claimants stated that the land in dispute forms part of a larger expanse of land deforested sometime in the 14th century by the ancestors of the entire Egbele Community now comprising of the following quarters: Afuda Quarters, Idumu-Enabor, Uwen-Udughele, Idumu-Imiomon, Idumu-Esele and Idumu-Ekhuere.

They alleged that the aforesaid Quarters were named after their ancestors. That after the deforestation, their ancestors planted economic crops in the residential area such as ducanut, bitter kola and kolanut. That while their ancestors were farming on the land in dispute they started to deforest other adjoining lands not in dispute in this suit where their people dwell till date.

That the farming and expansion activities of their ancestors continued from one generation to another through their siblings who have developed the Egbele Community to its present day status.

The claimants stated that after the deforestation of the entire Egbele Community, they gave part of the communal land, not in dispute to Unuwazi Village Uromi to settle on, several years ago owing to the frequent invasion of the Unuwazi people by the Hausa slave traders.

On the location of the land they stated that while going from Egbele to Ujabhole Village, the land in dispute is situate on both sides of Unuwazi/Ujabhole Road, Egbele Uromi. That there is a moat on both sides of the Road which serves as the boundary between Egbele Community of Uromi and Ujabhole Village of Irrua.

That there is a shrine called 'Okoven' belonging to the Egbele and Ujabhole people which also serves as a boundary mark between both Communities and members of the Egbele Community have been farming on part of the disputed land till date with various economic crops thereon.

They alleged that recently the Defendant trespassed onto the land in dispute and started laying claim to the land when his father never laid claim to the land when he was alive.

According to the Claimants, sometime in 1970 the Ujabhole Community trespassed onto the land in dispute and started laying claim of ownership to it. That following the alleged trespass onto a portion of the land in dispute, the 3rd Claimant's father Eimunjieze and two others representing Egbele Community instituted an action against the Ujabhole Community in the Area Customary Court Ubiaja in 1970.

That when the action commenced, the Ujabhole Community met and sought peaceful settlement over the aforesaid land and based on both parties' representation to the customary court the case was struck out on the 7/9/1970.

The Claimants stated that during the pendency of this present suit, the Defendant put some Hausa tenants on the land in dispute and the Egbele Community asked the Defendant to quit the tenants.

That in order to avoid a breach of the peace by the continuous trespass on the land in dispute, some concerned personalities from Uromi and Irrua communities went to inspect the disputed land. That shortly after the inspection of the land by the concerned persons, the Ujabhole Community allegedly ostracized the Defendant.

The Claimants stated that ownership of part of the land in dispute was never at any time resolved in favour of the Defendant and no appeal in respect of part of the land in dispute was ever upheld by the Customary Court of Appeal.

In defence of this suit, the Defendant testified and called five witnesses. The Defendant's case is that he is a native of Ukpato in Ujabhole. According to him, Ukpato has no direct boundary with Egbele but with Unuwazi community. He said that the farm land in dispute is particularly known as Ukoke farmlard in Ukpato Ujabhole Irrua and it is located at Ukpato Quarters-Ujabhole in Esan Central Local Government of Edo State and is more properly delineated by a litigation survey plan dated 16th April, 2018 with plan no: SIE/ED 18/D04.

He alleged that the land was deforested several years ago by his great grandfather by name Unegbato Ojezi, who was a successful farmer who planted several crops on the land.

The Defendant alleged that upon the demise of his great grandfather, he was buried by his first son together with other children in accordance with Esan Native Law and Custom and his first son Ehianeta inherited the entire land of his father including the land in dispute. That upon his own demise, Ehianeta was buried by his first son Okosun in accordance with Esan Native Law and Custom and thereafter inherited the properties including the land in dispute and started to farm on the land with his children and brothers without any hindrance until he died.

The Defendant alleged that sometime in the 1960s, the said Okosun who was his father gave him 300 Native Plots of this land to plant cash crops such as rubber, ducanut, palm tree etc. He said that the said 300 native plots are part of the land now in dispute.

He said that sometime in 1998, one Victor Imolele, a native of Unuwazi, and Ebhomienlen Ikhinobe and Kpuku Palma both natives of Egbele laid claim to part of the land in dispute and destroyed the cash crops of the Defendant on the land. The Defendant allegedly sued them before the Esan Central Area Customary Court, Irrua and ownership of the land-300 native plots was allegedly awarded in his favour to the knowledge of the Egbele people. He alleged that the said judgment was upheld by the Customary Court of Appeal in Appeal No. CCA/33A/2004.

The Defendant maintained that the land in dispute is situate at Ujabhole, Irrua and not in Egbele, Uromi. He said that he was never ostracized by the Ujabhole community in respect of this land. He stated that when John Africa Construction Company was constructing the Unuwazi/Ujabhole Road, they excavated sand from part of the land in dispute and compensated him and the Onojie of Irrua. That his family members have been exercising acts of ownership on the said land since the land was deforested by their great grandfather.

The Defendant alleged that when his father Okosun died, he was buried by his first son Oziegbe and himself in accordance with Esan Native Law and Custom. That his elder brother has been incapacitated for a long time and that he has been in charge of the land on behalf of the family, excluding the 300 native plots which his father gave to him since the 1960s.

Upon the conclusion of evidence, both counsel filed their written addresses which they adopted at the trial.

In his written address, the learned counsel for the Defendant, ***Dr. Bola Adekanle*** formulated a sole issue for determination as follows:

"Whether from the evidence before this Honourable Court, the Claimants are entitled to the reliefs claimed, having not proven their case on the balance of probability."

Thereafter, learned counsel articulated his arguments on the sole issue. He submitted that the Claimants have failed to prove their case on the balance of probability to warrant the judgment of this Honourable Court and as such, the answer to the lone issue for determination by the Defendant should be in the negative.

He posited that in a case for declaration of title to land, the two basic things that must be established are: certainty of the identity of the land in dispute; and the root of title to the land.

On the identity of the land in dispute, counsel submitted that it is the responsibility of the Claimant to prove with certainty the identity of the land in dispute. However, that in the instant case, the identity of the land is not in dispute but the only point of difference is the features in and around the land in dispute. He said that the parties presented different features in their litigation survey plans and

the only common feature is the burrow pit where a construction company excavated sand for which the Defendant was compensated.

On the root of title, learned counsel posited that there are five different ways of establishing title to land as stated in the case of ***Idundun v. Okumagba (1976) 9-10 S.C. 227 at 246.*** He enumerated them as follows:

1. Proof by traditional evidence;
2. By the production of documents of title;
3. By acts of ownership extending over a sufficient length of time and are numerous and positive enough to warrant the inference that the person is the true owner;
4. By acts of long possession and enjoyment of land which may be prima facie evidence of ownership of the particular piece or parcel of land or quantity of land; and
5. Proof of possession of connected or adjacent land in circumstances rending it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.

In support, he also referred to the following cases: ***Nkado v. Obiano (1997) 50 L.R.C.N. 1084*** **and** ***Osidele v. Sokunbi (2012) 15 N.W.L.R (Pt.1324) 470.***

He submitted that each of the five methods of proving title to land is independent of one another and reliance on one of them is sufficient to prove title to land. He relied on the following cases: ***Ukpakara v. Egbevhue (1996) 40/41 L.R.C.N. 1481; Nwosu v. Udeala (1990) 1 N.W.L.R. (Pt. 125) 632 @ 656.***

Counsel posited that in the instant case, the Claimants relied heavily on evidence of traditional history through deforestation which is the first means of proof but failed to trace the root of title from the first owner(s) who deforested the land in dispute down to the Claimants in an unbroken manner.

He said that the Claimants stated that the land in dispute was deforested by the ancestors of the entire Egbele community without more and referred the Court to paragraphs 6 and 7 of the Claimants 1st further amended statement of claim dated

14th December, 2018. He said that there are no clear pleadings or evidence on the names of their ancestors who allegedly deforested the land in dispute, in the 14th century and the history of the devolution of the title to this land from the time of their ancestors till it became vested in the Claimants.

He submitted that a party who relies on evidence of traditional history is required to plead and lead evidence as to the names of his ancestors, to narrate a continuous chain of devolution to the satisfaction of the Court not allowing any gap or gaps defying explanation or leading to a prima-facie collapse of the evidence of traditional history. He maintained that evidence of Traditional history which attracts credibility must be total in its narrations. That partial or overtly incomplete or abridged history of past events invariably leaves the recipient in doubt of the true nature of the aspect of such history embedded in secrecy.

He posited that a party relying on traditional evidence must plead and lead cogent evidence as to who founded the land and the particulars of intervening owners down to himself particularly when the Defendant is disputing issue of ownership with the Claimants. He referred to the cases of ***Sogunro &Ors v. Yeku & Ors (2017) 267 L.R.C.N 165 @ 194JJ & 195 AU Ratio 6; MICHAEL & ANOR V. ADULOJU (2018) LPELR-46312(CA);*** and ***CHUKWUEMEKA ANYAFULU & ORS V. MADUEGBUNA MEKA & ORS (2014) LPELR-22336(sc).***

Learned counsel submitted that the Claimants did not give cogent and clear evidence of the particulars of the intervening owners through whom they claim and as such they have not proved their root of title.

Counsel posited that apart from their failure to trace their root of title through traditional evidence, they have also failed to prove the quarter in Egbele where the land in dispute is situated and how it became Egbele Community land. He said that the Claimant pleaded several quarters that make up Egbele but failed to situate the land in dispute in any of the quarters.

He pointed out that under Esan native law and custom, whoever deforests a piece of land is the owner of the land to the exclusion of every other member of the community. He said that the Defendant pleaded and led evidence on this and the Claimants' witnesses under cross-examination corroborated this fact and referred to the evidence of CW2, CW3 and CW4 under cross-examination.

He posited that the question which has arisen is: at what point did the land deforested by their ancestors become a community land? He said that this is imperative because by virtue of Esan native law and custom, the children of the alleged ancestors ought to have inherited the land deforested by their fathers. He said that there are unfilled gaps in the case of the Claimants which make their case to be unreliable.

He posited that apart from relying on traditional evidence, the Claimants also tendered Exhibit A, proceedings of a case before the Customary Court Ubiaja. He submitted that Exhibit A is not relevant to the instant case. That the measurement of the land in dispute is approximately 1000 acres and is known as Odegbo farm bush, whereas the measurement of the land in dispute in Exhibit A is unknown.

Counsel submitted that the Claimants need to succeed on the strength of their case and where there is no counter claim as in the instant case, the burden of proving title is on the Claimant throughout the case without shifting any burden to the Defendant. He said that where the case of the Claimant is weak as in the instant case, it is bound to fail.

On the part of the Defendant, counsel posited that he testified that the land in dispute was deforested by his great-grand father Unegbato Ojezi several years ago. That his great-grand father farmed on this land until he died and after his death and burial, his 1st son Ehianeta inherited the land in accordance with Esan Native Law and Custom.

He posited that the Defendant traced the unbroken history of the land in dispute down to his father who was Ehianeta's 1st son that equally inherited the land in dispute after the death and burial of Ehianeta by Okosun who inherited the land in accordance with Esan Native Law and Custom. He said that the Defendant also led evidence of how Okosun farmed on the land in dispute with his children and brothers without any hindrance from anybody including the Claimants and their community until he died.

He said that the Defendant testified that before his father Okosun died, he gave him 300 native plots of the land in the 1960s and he planted cash crops on it. He said that the 300 native plots is part of the land now in dispute. He said that the Defendant also led evidence that in 1986, the land in dispute was trespassed upon by some

persons from the neighboring Unuwazi village which is between the Claimant's village and that of the Defendant. He said that the Defendant sued the trespassers at the Esan Central Area Customary Court particularly with respect to his 300 native plots and won the case in that court and on appeal.

He said that the Defendant denied the claim that the land in dispute belongs to Egbele community and stated categorically that the land in dispute belongs to him and that the land in dispute is not even within the territory of Esan North East Local Government, Uromi, but within the territory of Esan Central Local Government, Irrua, particularly in Ujabhole. He said that this fact was corroborated by the Claimant's witness C.W.3, one Mr. Friday when he said that there is no direct boundary between Egbele community where the Claimants hails from and Ujabhole community where the Defendant hails from. He posited that the evidence of the C. W. 3 is contrary to the evidence of the Claimants and this Court cannot pick and choose which of the Claimant's witnesses' evidence to believe or disbelieve. He referred to the case of ***Ajudua v. Awogu (No.2) [2004] 16 N.W.L.R. (Pt.898) Pg.82.***

He said that in further proof of his ownership of the land in dispute, the Defendant testified that he was compensated by John Africa Construction Company when they constructed the Ujabhole road. He said that the fact that the Defendant received compensation without any challenge from the Claimant is evidence of ownership and he urged the Court to so hold.

In conclusion, he urged the Court to dismiss the case of the Claimants with costs.

In his written address, the learned counsel for the Claimants, ***Prof. A.O.O. Ekpu*** formulated two issues for determination as follows:

i. ***Whether the Claimants have proved their claim for a declaration of title to the land in dispute; and***

ii. ***Whether the Claimants have successfully established a case of trespass against the Defendant thereby warranting the court in making an order for damages and an order of perpetual injunction against the Defendant.***

ISSUE I

Whether the Claimants have proved their claim for a declaration of title to the land in dispute.

Arguing this issue, learned counsel submitted that the Claimants have on a preponderance of evidence established their claim to title to the land in dispute by adducing cogent and credible evidence, which the Defendant was unable to debunk. He conceded that he who seeks declaration of title to land must succeed on the strength of his case and not the otherwise, as the onus of proof generally lies on he who asserts and he cited the following cases: ***BELLO V. EWEKA (1981) 1 SC 101*** and ***OSUJI V. EKEOCHA (2009) ALL FWLR (PT 490) PG. 614.***

He enumerated the five recognized ways of proving title to land under the Nigerian law as laid down in the case of ***Idundun v. Okumagba (1976) 9-10, SC 227*** and submitted that any one of the methods is adequate.

He posited that in this case, the Claimants in proving their title to the land are relying on proof by traditional history of the land and by acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference of true ownership.

He posited that the Claimants are claiming the land as communally owned by the Egbele community and not as private or personal property. He said that they gave evidence of how their ancestors (the founders of the various quarters making up Egbele) deforested the land and used it in common and their children up to the Claimants have continued to use the land as a communal property. He said that they have been farming on the land and they gave a portion of the land to Unuwazi community, when they were chased from their original location by jihadists. He posited that the Claimants' community have filed and defended actions in court in respect of parts of the land in dispute.

Counsel posited that all these activities were without any challenge from anybody. That against these acts of possession, the Defendant did not give any evidence of any activity carried out by them on the land before their forcible entry, which is the cause of action in this case. He said that the acts which the Defendant alleged he carried out in relation to the land were not sufficiently proved. He posited

that the Defendant's allegation that he was compensated for the burrow pit made on the land during the construction of a road was a bare assertion with no evidence produced to back up the claim. He said that the defendant did not mention the nature or value of the compensation, the date of the compensation or any form of document in that regard. He maintained that the story is not credible.

He posited that the Claimants explained that they did not demand any compensation for the burrow pit because the road being constructed was for their benefit and he referred to the evidence of the 2nd Claimant in this regard.

Again, on the Defendant's allegation that he filed an action against some persons at the Esan Central Area Customary Court, Irrua in respect of a part of the land in dispute in suit number ECACCI/36/2000, he submitted that the judgment tendered in Court cannot be relied upon in proof of title in this case for the following reasons: Firstly, that there is no evidence that the land in dispute in that case is in any way connected to the land in dispute in this case; Secondly, that the Claimants herein or the community they represent were not parties to that case; Thirdly, he stated that the judgment allegedly obtained on appeal to the Customary Court of Appeal in Appeal No. CCA/33A/2004 was never tendered at the trial. He urged this Court to invoke the provisions of the ***section 167 (d) of the Evidence Act*** to hold that if produced, the said judgment would be unfavourable to the Defendant. He also relied on the case of ***AREMU V. ADETORO (2007) 16 NWLR (PT. 1060) 244 (SC)***.

Learned counsel submitted that the parties in this suit are *ad idem* on the identity of the property in dispute, therefore no further proof is required on this.

He posited that the Claimants and their witnesses gave credible oral and documentary evidence of their entitlement to the land in dispute. That when the dispute first reared its head, the Claimants' community sued the Defendant's community at the customary court, Ubiaja and following the resolution of the dispute out of court, the matter was struck out as evidenced by Exhibit 'A'. He said that years later, the matter was again the subject of an arbitration by the kings of the two kingdoms of Irrua and Uromi along with some high ranking members of their communities and they resolved that the land in dispute was part of Egbele land in Uromi. He said that these pieces of evidence were not challenged by the Defendant in any way. He submitted that the Defendant cannot resile from the decision and all

the parties are bound by it. He said that having submitted to customary arbitration, the Defendant should not be allowed to reopen the matter all over again by continuing to lay any claim to the land and he relied on the case of ***OKOYE V. OBIASO (2010) ALL FWLR (PT 526) 489 @ 509***.

Learned counsel posited that the Defendant's case is not credible. That he changed his stories at will from time to time. That in the two previous cases the Defendant had and this current case, the Defendant named three different founders of the same land. That in this case, the Defendant says it was his great grandfather (Unegbato Ojezi) who deforested the land in dispute and referred to Paragraph 2f of his Further Amended Statement of Defence. He said that in Suit No. ECACCI/36/2000 (Exhibit 'E'), he said it was his grandfather (Ojezi), who founded the land and in Suit No. HCU/34/2007 (paragraph 8 of Exhibit 'B'), the Defendant stated that it was one Ogholo who deforested the land, which was subsequently inherited by one Igenegbale, later by Uwagbale, who in turn gave the land as a gift to Unegbato. He said that these are three completely different versions of the traditional history of the same land.

He said that the only point where the Defendant has maintained some consistency until now is that his community, Ujabhole shares a common boundary with the Claimants' community of Egbele separated by a moat. He referred again to Exhibits 'E' and 'B' (paragraphs 2 and 9) and posited that in this current case, the Defendant denied emphatically that his community has a boundary with the Claimants' community. He referred to paragraph 2b of his statement of defence and his evidence under cross examination. He said that his witness (Joseph Okosun, DW 2) maintained the same position that Ujabhole does not share boundary with Egbele though he agreed that a moat separates Ujabhole from Uromi.

However counsel pointed out that in the Defendant's earlier deposition on oath in this case dated 12th July, 2013 (tendered as **Exhibit 'F'**), the Defendant stated as follows: ***"3. That the defendant is a native of Ukpato, Ukpato has boundary with Unuwazi village in Uromi, Idumekhuere quarters in Ujabhole, has boundary with Idumuyasele quarters of Egbele.***" He posited that the Defendant and his witnesses are not witnesses of truth and cannot be relied upon.

He maintained that the Defendant's earlier position confirms the Claimants' case that Ujabhole has boundary with Egbele with a moat separating them. He said that the Defendant and his witnesses now agree that a moat separates Irrua (of which Ujabhole is a part) from Uromi (of which Egbele is a part). He maintained that this common position of a moat separating the two kingdoms makes it easier in resolving the issue in this case. He pointed out that the litigation survey plans of both parties (Exhibits 'D' and 'G') show this important feature. That in addition, the Claimants gave evidence that there is an *Okoven* shrine at the boundary which was also reflected on the Claimants' litigation plan. He said that this evidence was not challenged or contradicted in any way by the Defendant. He submitted that using these two boundary features, the land in dispute is clearly on the Uromi side of the divide and this ought to put the matter to rest. He submitted that it is settled law that where the defendant has no counter – claim, it is the claimant's plan that should define the land in dispute and he relied on the cases of ***MOMOH VS. UMORU (2011) 15 NWLR (Pt.1270) 217 at 247*** and ***OKPALOKO VS. UME (1976) 9 - 10 SC 269***.

Counsel posited that in this case, the Defendant has no counter – claim and he did not challenge the Claimants' survey plan. That his counsel has submitted that there is no issue about the identity of the land in dispute. He posited that the Claimants' Exhibit 'D' should therefore be used to determine the location and features of the land in dispute since both parties agree that a moat separates Ujabhole and Egbele. He urged the Court to hold that the land in dispute is a part of Egbele land in Uromi and that the Claimants have made out a case for a declaration of their entitlement to a right of occupancy over the land in dispute.

ISSUE II

Whether the Claimants have successfully established a case of trespass against the Defendant thereby warranting the court in making an order for damages and an order of perpetual injunction against the Defendant.

On issue two, learned counsel submitted that the Claimants have successfully established that they were in possession of the land in dispute at the time of the unauthorized invasion or entry by the Defendant. He posited that the law is trite that the slightest interference with a person's possession of land will amount to trespass

unless the person interfering is able to establish a superior title than the one claiming for trespass and he relied on the decision of the Supreme Court in the case of ***OMOTAYO CO-OPERATIVE SUPPLY ASSOCIATION (2010) ALL FWLR (Pt. 537) 608 at 628***.

He posited that the Defendant admitted entering the land in dispute without the authorisation of the Claimants. He submitted that a trespasser though in actual physical possession of the land, is regarded in law not to be in any possession since he cannot, by his own wrongful act of trespass, acquire any possession recognized at law. He submitted that where there are rival claimants to possession of a piece of land, the law ascribes possession to the party who has a better title.

He posited that the Claimants are in the circumstances entitled to damages for trespass, having established trespass against the Defendant, and an order of injunction restraining the Defendant must also necessarily follow. He cited the case of ***ORIORIO V. OSAIN (2012) 16 NWLR (PT. 1327) 560***.

He urged the Court to resolve issue two in favour of the Claimants and grant their reliefs.

I have carefully considered all the processes filed in this suit, together with the evidence led, the exhibits admitted in the course of the hearing and the addresses of the respective Counsels to the parties.

Upon a careful examination of the Issues formulated by learned counsel for the parties, I observed that the Defendant did not file any Counter-Claim in this suit so I am of the view that the sole issue for determination in this suit is: ***Whether the Claimants have proved their title to the land in dispute on the balance of probabilities to be entitled to the reliefs which they seek in this suit?***

I will now proceed to resolve the issue.

In a claim for a declaration of title to land, the burden is on the Claimant to satisfy the Court that he is 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 the five ways of proving ownership of land in Nigeria 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 Claimants appear to be relying on the first, third, and the fifth means of proof. To wit: proof by traditional evidence; by acts of ownership; and by acts of long possession and enjoyment of the land.

The Claimants' traditional evidence of title is that that the land in dispute is communally owned by the Egbele community. They gave evidence of how their ancestors (the founders of the various quarters making up Egbele) deforested the land and used it in common and their children up to the Claimants have continued to use the land as a communal property. They alleged that they have been farming on the land and they gave a portion of the land to Unuwazi community, when they were chased from their original location by jihadists. They testified that the Claimants' community have filed and defended actions in court in respect of parts of the land in dispute.

However, in this suit, the Defendant has seriously contended that the land in dispute belongs to him personally and he led his own evidence of the traditional

history of the land by tracing the origin of the land from the time when the land was allegedly deforested by his great-grand father Unegbato Ojezi several years ago. He stated that his great-grand father farmed on this land until he died and after his death and burial, his 1st son Ehianeta inherited the land in accordance with Esan Native Law and Custom. He said that Ehianeta's eldest son was his father, Okosun who equally inherited the land in dispute after the death and burial of Ehianeta in accordance with Esan Native Law and Custom. He alleged that his father farmed on the land in dispute with his children and brothers without any hindrance from anybody including the Claimants and their community until he died.

He admitted that although he was not the eldest son of his father, he alleged that before his father Okosun died, he gave him 300 native plots of the land in the 1960s and he planted cash crops on it. He said that the 300 native plots is part of the land now in dispute. According to the Defendant, sometime in 1986, the land in dispute was trespassed upon by some persons from the neighboring Unuwazi village and he sued the trespassers at the Esan Central Area Customary Court particularly with respect to his 300 native plots and won the case in that court and on appeal.

The Defendant alleged that when his father Okosun died, he was buried by his first son Oziegbe and himself in accordance with Esan Native Law and Custom. That his elder brother has been incapacitated for a long period of time and that he has been in charge of the land on behalf of the family, excluding the 300 native plots which his father gave to him since the 1960s.

In further proof of his ownership of the land in dispute, the Defendant testified that he was compensated by John Africa Construction Company when they constructed the Ujabhole road. He said that he received the compensation without any challenge from the Claimants.

It is settled law that in a claim for declaration of title to land, the Claimant has the burden to establish his claim by credible evidence. The first duty on the Claimant in a land suit is to lead evidence that will establish the identity of the land in dispute. Even where he has traced the traditional history of the land, if the evidence is not linked to a definite parcel of land, which is the subject of the claim, there will be no parcel of land upon which the declaration can be tied to, as the declaration cannot be made in vacuum.

In the absence of proof of identity of the land to which the declaration can be related, the declaration cannot be made. See the cases of ***Awote v. Owodunni (No. 2) (1987) 2 NWLR (pt. 964) p. 337;*** and ***Nwokidu v. Okanu (2010) 3 NWLR (pt. 1181) p. 362***.

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

In the instant case, there doesn't appear to be much dispute about the identity of the land in dispute. In their written addresses, the two learned counsel for the parties conceded that there is no dispute about the identity of the disputed land. The dispute appears to be about the location of certain features on the land such as the burrow pit and the community shrine (Okoven). However it is common ground that these features exist on the land. They were captured in the Claimants and the Defendant's survey plans which were admitted in evidence as Exhibits "D" and Exhibit "G" respectively. In any event, it is settled law that in land cases, it is the Claimant's survey plan that determines the land in dispute and not the defendant's survey plan where the defendant has not counter-claimed. See: ***OKPALOKO VS. UME (1976) 9 - 10 SC 269; MOMOH VS. UMORU (2011) 15 NWLR (Pt.1279) 217 at 247; OGAH & ANOR V. GIDADO & ORS (2013) LPELR-20298(CA) (PP. 31 PARAS. A).***

However, the main dispute in this suit is on the issue of title as between the Claimants and the Defendant. Although the Defendant did not file a counterclaim in this suit, by his evidence of the traditional history of the land, he is claiming ownership of part of the land in dispute based on the alleged customary gift inter-vivos of 300 native plots within the land from his late father Pa. Okosun to him. According to him, the remaining portion outside the 300 plots belongs to his family and he is holding them on behalf of his elder brother who he alleges is presently incapacitated as a result of ill-health.

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

The salient issue to address at this stage is to determine whether it has been established that there was in fact a gift inter-vivos of part of the land in dispute to the Defendant.

The gift of land under customary law is the gratuitous transfer and handing over of land by the owner (donor) to the donee in the presence of witnesses and acceptance in the presence of witnesses with much publicity. See ***Bankole V. Tapo (1961) ALL NLR Page 140, Hammod V. UAC Ltd (1935) 2 WACA, page 385- Kwakuwah V. Nayenna (1938) 4 WACA 165. MR. COCOA ODIEDI v. MR. VOTE ONORIKUTA & ORS (2020) LPELR-51255(CA)***.

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

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

"At any rate there was no burden on them legal or evidential to prove that there was no gift inter vivos of the land in dispute. The burden remained

throughout on the respondent. In Lawson v. Ajibulu (supra) @ P.41 Belgore JSC observed:-

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

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

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

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

Coming to the instant case, I observed that although the Defendant pleaded the fact of customary gift, at the trial the evidence adduced was rather scanty. There was no evidence of the gratuitous transfer and handing over of land by his late father Pa. Okosun, in the presence of witnesses. The bare assertion of the Defendant that there was such a gift is not sufficient proof of same.

From the foregoing it is evident that the Defendant has not discharged the onus on him to prove that there was a gift of any part of the land to him. Furthermore, the allegation that the remaining part of the disputed land belongs to his family appears quite irrelevant because, the Claimants did not sue his family neither did they sue the Defendant in a representative capacity.

From the foregoing, it is apparent that there appears to be a serious gap in the Defendant's evidence of traditional history relating to the devolution of the disputed land from his father Pa Okosun to him. The lack of evidence to substantiate the alleged gift has effectively truncated his evidence of traditional history of the land.

However, it is settled law that in a claim for declaration of title to land, the claimant must succeed on the strength of his own evidence adduced at the trial, and not on the weakness of the defendant's case, except where such weakness supports his case. Therefore for a claimant to succeed in a claim for declaration of title to land, he must adduce sufficient, cogent and credible evidence which must satisfy the Court that he is entitled to the declaration sought. Being a declaratory relief, it is not granted merely because the defendant's claim is weak or that the defendant has made admissions in his pleading or evidence, but on the strength of the case presented by the claimant.

Generally however, in an action for declaration of title to land, the burden lies throughout on the claimant to proof his case on the strength of the evidence, adduced by him. That burden in a declaratory action is static and fixed on the claimant and never shifts, save in certain cases during or in the course of trial, where the law imposes on the defendant the onus of proving certain facts as fixed by the pleadings; or where the defendant has made a counter-claim. See ***Ebenogwu v. Onyemaobim (2008) 3 NWLR (Pt.1074) P.396; Ezeigwe v. Awudu (2008) 11 NWLR (Pt.1097) p.158; Onisaodu v. Elewuju (2006) 13 NWLR (998) P.517 and Mani v. Shanono (2006) 4 NWLR (Pt.969) P.132.***

Juxtaposed with the evidence adduced by the Defendant in this case, the Claimants who relied on traditional history, led evidence of how the land in dispute is communally owned by the Egbele community. They gave evidence of how their ancestors (the founders of the various quarters making up Egbele) deforested the land and used it in common and their children up to the Claimants have continued to use the land as a communal property. They alleged that they have been farming on the land and they gave a portion of the land to Unuwazi community, when they were chased from their original location by jihadists.

The salient question is whether these pieces of evidence are cogent and credible enough to establish the Claimant's root of title based on traditional history.

In his written address, the learned counsel for the Defendant has seriously contended that the Claimant evidence cannot sustain his Claim. He maintained that there are no clear pleadings or evidence on the names of the Claimants' ancestors who allegedly deforested the land in dispute, in the 14th century and the history of the devolution of the title to this land from the time of their ancestors till it became vested in the Claimants.

Furthermore he contended that a party who relies on evidence of traditional history is required to plead and lead evidence as to the names of his ancestors, to narrate a continuous chain of devolution to the satisfaction of the Court not allowing any gap or gaps defying explanation or leading to a prima-facie collapse of the evidence of traditional history. That evidence of traditional history which attracts credibility must be total in its narrations.

It is settled law that in an action for declaration of title to land based on communal ownership there is need for the Claimant to plead facts showing how the land in question became communal property and also the identity of the communal ancestor ought to be established. See ***Echi v. Nnamani (2000) 5 SC 62 at 78;*** ATALOYE ***& ORS V. JUMOKE (2016) LPELR-41317(CA) (PP. 16-17 PARAS. F).***

Furthermore, I will draw attention to the provisions of ***Section 66 of the Evidence Act, 2011*** which states as follows:

"66. When the title to or interest in family or communal land is in issue, oral evidence of family or communal tradition concerning such title or interest is admissible."

The word ***"communal"*** is defined in ***Oxford Advanced Learner's Dictionary, 9th Edition, page 303*** *inter alia* as follows:

"Shared by, or for the use of, a number of people, especially people who live together… Involving different groups of people in a community."

. In the case of ***ECHI & ORS. V. NNAMANI & ORS. (SUPRA) AT 28 (A - C)***, the Supreme Court stated how to prove communal ownership of land as follows: ***"It is well accepted that where the traditional history of a particular piece of land is given in support of the family, it is usually traced to an individual founder who***

first acquired the land. See Ngwo V. Onyejena (1964) 1 All NLR. 352. Similarly where a community as a whole claims a piece of land, it is usually through inheritance or descent from a common ancestor, acknowledged as the founder of the community or by conquest. See Mora V. Nwolusi (1962) 2 SCNLR 73: (1962) 1 All NLR 681."

Furthermore, in the case of ***OSUKPONG & ORS V. EDUOIKA & ANOR (2015) LPELR-24641(CA) (PP. 5-6 PARAS. E),*** the Court of Appeal exposited thus: ***"Communal ownership however, cannot be situated in vacuo. There must be clear averments in the pleadings of how the community was founded and became seised of the land in issue.***"

Again in the case of ***LEBILE VS THE REGD TRUSTEES OF C & S CHURCH OF ZION OF NIGERIA UGBONLA & ORS (2003) 13 NSCQR 19 at 28***, ***UWAIFO, JSC*** stated thus:

"It cannot be too often said that a party who relies on traditional history (which a claim to the founding of a village or town implies) would need to plead the names of his ancestors to narrate a continuous chain of devolution, not allowing there to be any gap or gaps defying explanation or leading to a prima facie collapse of the traditional history. The history must show how the land by a system of devolution came to be owned by the plaintiff."

Applying the foregoing principles to the instant case, it is evident that Claimants traced the traditional history of the disputed land to sometime in the 14th century when it was deforested by the ancestors of the entire Egbele Community now comprising of the following quarters: Afuda Quarters, Idumu-Enabor, Uwen-Udughele, Idumu-Imiomon, Idumu-Esele and Idumu-Ekhuere.

However, they did not pleading any facts to trace their root of title to any of the quarters in the community or how the land became communal land. Furthermore, they did not plead or lead any evidence on the names of their ancestors to narrate a continuous chain of devolution up to the present Claimants. In the absence of these salient pleadings and evidence, I am in complete agreement with the learned counsel for the Defendant that the Claimant's evidence of traditional history of the land cannot sustain their root of title. The evidence adduced by the Claimants appears rather scanty and palpably weak.

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

In the event, I am of the view that the Claimants have also failed to establish their title through the other means of proof.

In the event, the sole issue for determination is resolved against the Claimants. The Claims are accordingly dismissed with ***N100, 000.00 (One Hundred Thousand Naira) costs in favour of the Defendant.***

Hon. Justice P.A.Akhihiero
04/08/22

<u>COUNSELS:</u>
Prof. A.O.O. Ekpu----------CLAIMANTS
Dr. Bola Adekanle----------DEFENDANT