

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UBIAJA JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,
JUDGE, ON WEDNESDAY THE
15TH DAY OF FEBRUARY, 2023.

BETWEEN

SUIT NO: HUB/13/2016

CHIEF ISAAC IKEKHUAMEN JP -----CLAIMANT

AND

1. MR. ISAAC ITAMAH
2. CHIEF OSAGHALE OGBEIDE -----DEFENDANTS

AND

CHIEF OSAGHALE OGBEIDE -----COUNTER-CLAIMANT

AND

1. CHIEF ISAAC IKEKHUAMEN JP
2. THE EXECUTIVE GOVERNOR OF EDO STATE
3. THE ATTORNEY GENERAL OF EDO STATE
4. THE PERMANENT SECRETARY MINISTRY
OF LOCAL GOVERNMENT AND CHIEFTAINCY
AFFAIRS } **DEFENDANTS**
(BY COUNTER CLAIM)

JUDGMENT

The Claimant instituted this action against the Defendants/Counterclaimants vide an extant Statement of Claim dated the 22nd of March, 2019 titled 3rd Amended Statement of Claim wherein he claimed against the Defendants/Counter-Claimants as follows:

- 1. A DECLARATION that the Claimant is the lyase of Ohordua Kingdom by virtue of his appointment as the lyase of Ohordua Kingdom by His Royal Highness, the Onojie of Ohordua Kingdom in Esan South East Local Government Area of Edo State and the same having been gazetted;**
- 2. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendants from parading themselves as the acting Iyase of Ohordua Kingdom or in any other nomenclature purporting to be the acting lyase of Ohordua Kingdom or from carrying out the duties/functions of the Claimant as the lyase of Ohordua in any manner whatsoever, howsoever and wheresoever; and**
- 3. N50, 000, 000.00 (Fifty Million Naira Only) being general damages for the embarrassment and humiliation the Defendants have caused the Claimant by their act of parading themselves as the acting lyase of Ohordua kingdom including the publication of the 1st Defendant's photograph as contained in the 2016 calendar of Traditional Ruler/Council of Chiefs in Ohordua Kingdom in Esan South-East Local Government of Edo State.**

The Defendants/Counter-Claimants on their part upon receipt of the Claimant's originating process filed their extant joint Statement of Defence and Counter-claim dated 20th April 2022 titled Defendants further Amended Joint Statement of Defence/Counter-claim wherein the Defendants/ Counter-claimant claimed against the Claimant/1st Defendant by Counter-claim as follows:

- 1. A declaration that the installation and award of certificate of registration of a traditional chief under part III of the traditional Rulers and chiefs Edict 1979 to Isaac Ikekhuahen as the lyasele of Ohordua is null and void and without effect and it contravenes natural justice and is repugnant to Ohordua native law, custom norms and tradition;**
- 2. A declaration that the accession to the title/throne of "lyasele of Ohordua" is hereditary and belong exclusively to the Idumu-lyasele family of Ozenyen Ohordua and is being regulated by the native law and custom, culture and tradition of Ohordua people;**
- 3. A declaration that the 2nd Defendant/counter claimant, Chief Osaghale Ogbeide is the rightful person to be issued certificate of registration as the traditional lyasele of Ohordua having ascended to the throne of "lyasele of Ohordua" by inheritance in consonance with the native law and custom,**

culture and traditions of the Ohordua people upon the death of his late father, Chief Ogbeide Akueta who until his death was the lyasele of Ohordua, and having performed the final burial rite of his said late father;

- 4. A declaration that the failure of the 2nd and 3rd Defendants to give counter claimant and the lyasele ruling house (Idumu-lyasele of Ohordua) the opportunity of being heard before issuing certificate of registration to the defendants and gazetting same in the Edo State Gazette of Notice No. 9 of March, 1st, 2001 is wrongful, unreasonable, inequitable and against the rule of fair hearing and natural justice; and*
- 5. An order compelling the 2nd Defendant in the counter claim to coned/withdraw the certificate of registration issued in favour of the 1st defendant as the lyasele of Ohordua.*

The Defendants/Counter-claimants also filed a reply dated 16th December, 2019 to the Claimant's Amended Defence to their Counter-claim and the 2nd to 4th Defendants by Counter-claim filed their statement of defence to the Defendants/Counter-claimant counter claim.

In proof of his case, the Claimant testified for himself, tendered several exhibits and called one Mr. Michael Oboh (CW1) as his lone witness. The Defendants/Counter-claimants in their defence and in proof of counter claim, 1st Defendant, Mr. Isaac Itama testified for himself and the 2nd Defendant-Counter-claimant, tendered several exhibits, and called five witnesses to wit: Chief Enaholo Edward DW1 (The Oliha of Ohordua), Elder Donald DW2(the eldest and Odionwere of Eguare Ohordua), David Ihaza DW3 (Chief Ihaza of Ohordua), Chief Peter Dike DW4 (the Obazuwaye of Ohordua) and Godwin Onodiana DW5 (younger brother of same mother with 2nd Defendant/Counter-claimant).

The 2nd – 4th Defendants by Counter-claim in their defence to the Counter-claim called one witness DDW1 and tendered no exhibit.

The Claimant's case as put forward in his evidence is that he holds the chieftaincy title of Iyasele of Ohordua, the title having been bestowed on him in 1994 by the then Onogie of Ohordua, His Royal Highness Aikpoagie II.

That upon his appointment as the Iyasele of Ohordua, he registered his chieftaincy title with the Edo State Government in the ministry of Chieftaincy and Local Government affairs and was issued a certificate of Registration by the Edo State Government. He alleged that the 2nd Defendant/Counter Claimant is presently

usurping his title as the Iyasele of Ohordua because there cannot be two Iyaseles in Ohordua. Hence he is urging this Court to restrain the Defendants from parading themselves as the acting Iyase of Ohordua Kingdom or from carrying out the duties/functions of the Claimant as the Iyase of Ohordua.

On the other hand, the case of the Defendants/Counter Claimant is that the 2nd Defendant/Counter Claimant, Chief Osaghale Ogbeide is the rightful traditional Iyasele of Ohordua having inherited same in accordance with the tradition, custom and culture of Ohordua as the heir apparent of his late father, Chief Ogbeide Akueta who until his death was the traditional Iyasele of Ohordua. They maintain that accession to the position of Iyasele of Ohordua is hereditary and regulated by the native law and custom of the Ohordua people.

On the part of the 2nd – 4th Defendants by counter claim, their case is that the Claimant upon presenting himself for registration as someone who has been appointed by the Onogie as the Iyasele of Ohordua, he was issued a certificate of registration in line with the relevant provisions of the law.

Upon the close of evidence, the learned counsel for the parties filed their final written addresses which they adopted as their arguments in support of their respective cases.

In his final written address, the learned counsel for the Claimant, *Chief D.O.Okoh S.A.N* formulated three issues for determination as follows:

- 1) WHETHER THE CLAIMANT HAD PROVED HIS CLAIM ON THE BALANCE OF THE PROBABILITY TO ENTITLE HIM TO THE RELIEFS SOUGHT.**
- 2) WHETHER HAVING REGARD TO THE FACT THAT THE IYASE OF OZENYEN IS EXTINCT, THE COUNTER CLAIM IS NOT AN EXERCISE OF FRIVOLITY DESERVING OF SUMMARY DISMISSAL.**
- 3) WHETHER THE COUNTER CLAIM IS NOT CAUGHT IN THE IRREPRESSIBLE WEB OF STATUTE OF LIMITATION.**

Thereafter, the learned counsel articulated his arguments on the three issues seriatim.

ISSUE 1.

WHETHER THE CLAIMANT HAD PROVED HIS CLAIM ON THE BALANCE OF THE PROBABILITY TO ENTITLE HIM TO THE RELIEFS SOUGHT.

Opening his arguments on this issue, learned counsel posited that the case of the Claimant is clearly borne out in his Statements on Oath dated 20/9/2016, 24/3/2017, 22/10/2018 and 2/10/2019, which were duly adopted on 4th February, 2019 and 11th February, 2020. He reproduced the germane paragraphs of his evidence in his written address.

He said that in support of his case, the Claimant tendered Exhibits “A” – “P” which clearly demonstrated his right and entitlement to the reliefs sought. He said that all the parties to this action are in agreement that the Onojie of Ohordua is the prescribed authority in Ohordua Kingdom to appoint members of the Council of Chiefs irrespective of his/her tribe. That it is therefore not in dispute that he has the statutory and ancestral powers to confer a title on a deserving person he deems fit.

Counsel referred to the case of *Ibrahim v. Barde (1996) 9 NWLR (Pt. 474) 513 at 529 para E-F* where the Court stated the meaning of the word “prescribe” thus:

“The word "prescribe" bears in its ordinary natural meaning as being to lay down or impose authoritatively. To lay down as a rule or direction to be followed. To set down or give rules, directions etc. In other words, the word "prescribe" means to lay down authoritatively as a guide, direction or rule; to impose as peremptory order; to dictate; to point, to direct, to give as a guide, direction or rule of action, to give law”.

He therefore submitted that the discretionary powers of the Onojie to appoint Chieftaincy title holders in his domain are unfettered, the main criteria being loyalty and likeness. See *Bayero v. Agundi (2021) 16 NWLR (Pt. 1802) 347 at 372 – 373*.

He posited that it is clear from the reliefs sought that they are mainly declaratory and he submitted that declaratory actions require proof on the balance of probabilities or the preponderance of evidence and he relied on the case of *Emmela v. Chuba – Ikpezu (2017) 15 NWLR (Pt. 1589) 345 at 380*.

However, he submitted that the Claimant must succeed on the strength of his case and not on the weakness or even admission of his opponent and he referred to the case of *WHITE DIAMOND PROPERTY DEVELOPMENT V. TRADE WHEELS LIMITED (2022) 8 NWLR (PT. 1832) 247*.

Learned counsel submitted that the Claimant has proved his reliefs on the preponderance of material and convincing evidence adduced at the trial. He posited that from the oral and documentary evidence tendered by the Claimant, it is obvious that the title of Iyase conferred on the Claimant in 1995 was newly created, approved and was for the first time in the history of Ohordua conferred on Chief Isaac Ikekhuame, who is the first holder of this hereditary title. He said that by a letter dated 14th March, 1994 and tendered as Exhibit “L” the Onojie of Ohordua specifically requested for the approval and recognition of new chieftaincy titles in his kingdom viz:

1. CHIEF OJOMON OF OHORDUA;
2. CHIEF IYASELE OF OHORDUA;
3. CHIEF OYAKHIRE OF OHORDUA
4. CHIEF INNEH OF OHORDUA
5. CHIEF ERO OF OHORDUA
6. CHIEF OKAKULO OF OHORDUA
7. CHIEF ESON OF OHORDUA
8. CHIEF OLOKUN OF OHORDUA

He said that subsequently by a letter dated 9th May, 2001 tendered as Exhibit “D”, the Onojie stated thus: ***“To enable me register the recipient, I have to formally apply for the inclusion of the Iyase of Ohordua title in the second schedule to the Traditional Rulers and Chiefs Edict 1979. Happily this title has just been gazetted and I am hereby applying that Chief Isaac Ikekhuamen be registered as the Iyase of Ohordua and given Certificate of recognition. It is necessary to explain that the Iyase of Ozenyen which the petitions are quarreling about is different from the Iyase of Ohordua. That title has not been given to anybody. It is my wish that it will be done in the future on any worthy citizen from the quarter”***.

He posited that these new/additional titles created by the Onojie were approved by Esan South East Local Government as per Exhibit “A”. That by Exhibit “B”, the title of Iyase of Ohordua was conferred on the Claimant by the Onojie of Ohordua and the Esan South East Local Government by Exhibit “E” wrote to the then Directorate of Local Government and Chieftaincy Affairs and urged the

recognition of the Claimant as the Iyase of Ohordua stating that the Onojie has cleared the difference between Iyase of Ohordua and that of Ozenyen village.

He said that the Claimant's title was duly notified to the whole world vide Exhibit F and he was issued a certificate of registration vide Exhibit "G". That by Exhibit "H" the then Directorate of Local Government and Chieftaincy Affairs resolved the dispute resulting from a petition by Ozenyen village and registered the Claimant alias ZICO as the Iyase of Ohordua with effect from 11th November, 1995.

He referred to paragraphs 2 and 3 of Exhibit H which states thus:

"2. Kindly forward the attached original certificate of registration in favour of Chief Isaac Ikekhuamhen as the Iyasele of Ohordua to the Onojie of Ohordua who is the prescribed authority for Ohordua Clan for onward delivery to Chief Ikekhuamhen.

3. The Deputy Governor has also directed that in order to reduce anxiety and tension in Ohordua Clan, the Onojie should confer the vacant chieftaincy title of Iyasere of Ozenyen on the rightful person without delay".

Learned counsel posited that from the foregoing, the Claimant has proved his declaratory reliefs on the balance of probabilities.

As to the relief for damages, counsel pointed out that the 1st Defendant was the original Defendant who joined the 2nd Defendant with leave of court. That the Claimant's only witness testified how he was shocked to see and hear persons despising the Claimant sequel to an Almanac Exhibit "I" which held out the 1st Defendant as the Acting Iyase of Ohordua. He said that the Defendants having admitted in their pleadings and evidence that they are the Iyase of Ohordua but failed woefully to tender a certificate to that effect, the Claimant is entitled to damages; a fortiori that ***Section 20(1) of the Traditional Rulers of Chief Edict 1979*** prescribed two years imprisonment for a person arrogating Chieftaincy Title to himself.

He submitted that the evidence before the court preponderates favour of the Claimant and he urged the Court to so hold and to resolve issue one in favour of the Claimant.

ISSUE 2:

WHETHER HAVING REGARD TO THE FACT THAT THE IYASE OF OZENYEN IS EXTINCT, THE COUNTER CLAIM IS NOT AN EXCERSIE OF FRIVOLITY DESERVING OF SUMMARY DISMISSAL.

On issue two, learned counsel submitted that it is settled law that a Counter Claim is a distinct action of its own from the substantive suit. That it is a weapon of offence which enables a Defendant to enforce a claim against the Claimant as effectually as an independent action. See: *Nsefi v. Muna (2014) 2 NWLR (Pt 1390) 151, Lakpobiri v. Ogola (2016) 3 NWLR (Pt 1499) 328, Esuwoye v. Bosere (2017) 1 NWLR (Pt. 1546) 256.*

He submitted that the Counter Claimant herein is seeking declaratory reliefs which he has the burden of proving on the strength of its own cause and not on the omission or weakness of the Defence to the Counter Claim.

He submitted that it has been established that the title of Iyase of Ozenyen is extinct as clearly stated by the prescribed authority, the Onojie of Ohordua in Exhibit “L”. He therefore submitted that the Counter Claim is a sheer academic exercise.

He posited that to compromise the case of the Counter Claimant, they proffered clearly inconsistent evidence as to who the 2nd Defendant is. That in one breath, he said that he is the son of late Ogbeide Akueta, while in another breath, they said that he is the ancestral son and in a most bizarre evidence, they said that Madam Osehi – the daughter of Ogbeide after giving birth to her children for her husband – Mr. Onodiana of Ibhiedu went out to marry her father – Ogbeide and gave birth to the 2nd Defendant.

He said that at the same time, the Defendants maintain that inheritance to the throne of Iyase of Ozenyen is by primogeniture that is from father to son. He submitted that the Defendants have failed to prove that the 2nd Defendant is the son of late Ogbeide Akueta having regard to the overwhelming contradictory evidence palpably empirically demonstrated that Osaghale is the 4th child and 3rd son of Madam Osehi Onodiana, the daughter of late Ogbeide Akueta, who had no male child leading to the irreversible conclusion by the Onojie of Ohordua that the line is extinct.

Furthermore, counsel emphasized that the two Chieftaincy Titles (Iyase of Ohordua and Iyase of Ozenyen) are not the same as clearly noted by the Prescribed Authority and the Edo State Government.

Counsel referred to page 5 of Exhibit “N” the booklet on the celebration of life of late Princess Osehi Onodiana, where her surviving children are listed as follows:

CHILDREN:

1. Mr. Dickson Onodiana Aghedo;
2. Eld. Saturday Onodiana Aghedo;
3. Mrs. Eloh Julie;
4. Eld. Prince Osegha Onodiana (**IYASE OF OHORUA**);
5. Eld. Sylvester Onodiana;
6. Mrs. Franca Omo;
7. Engr. Godwin Aghedo;
8. Mr. Wilson Onodiana (Step Son);
9. Grand Children 25;
10. Great Grand Children 5

Counsel posited that the 2nd Defendant is the 3rd son of Pa. Onodiana. That this fact is further confirmed by Exhibit “O” and “P” that is the master list of 1976/1977 where the 2nd Defendant’s name is Onodiana Osegha Aghedo and Exhibit “P” a letter of identification from Ibhiedu Primary School, Ohordua which letter shows that the name Onodiana Osegha Aghedo wrote the Primary Six Examination with Examination No. 000846 and Certificate Number 206650. He said that these two exhibits were uncontroverted and unchallenged and are deemed admitted.

Counsel referred to paragraph 9 of the Claimant written Statement on Oath dated 2nd October, 2019, where he stated thus: ***“That the 2nd Defendant is not the son of Ogbeide but he is the son of Onodiana and a native of Ibhiedu Ohordua as he has always been known as Oseghale Onodiana right from birth through his primary school days till date...”***. He said that this piece of evidence remains unchallenged since the Defendants failed to tender any document of the 2nd Defendant where he bears the name “Ogbeide.”

He submitted that the Defendants having failed to prove that Ogbeide Akueta had a son, the reliefs sought by the Counter Claimant amount to an exercise in frivolity. He urged the Court to resolve issue 2 against the Defendants/Counter-Claimants.

5.5 It is humbly submitted that a party does not need to call numerous/sundry witnesses to succeed in a claim before the court. The law requires a Claimant to succeed on his claim by proffering quality evidence. This the Claimant has done by cogent and compelling oral and documentary evidence. Section 167(d) of the Evidence Act 2011 applies only when material evidence is not lead and not when witnesses are not called.

ISSUE 3:

WHETHER THE COUNTER CLAIM IS NOT CAUGHT IN THE IRREPRESIBLE WEB OF STATUTE OF LIMITATION.

Counsel submitted that the Counter Claim is statute barred and he reproduced paragraph 53 of the Defence/Counter Claim which states thus: ***“The Counter Claimant avers that the 2nd Defendant vide its agent 4th Defendant issued Certificate of recognition to the 1st Defendant as the Iyase of Ohordua and gazetted same in the Edo State Gazette of Notice No. 9 of March 1st 2001 without recourse to the Iyase Ruling House of Idemu/Iyase Ozenyen of Ohordua”.***

He maintained that the main declaratory relief of the Counter-Claimant states thus: ***“A declaration that the installation and award of certificate of registration of a traditional chief under part III of the traditional Rulers and chiefs Edict 1979 to Isaac Ikekhuahen as the lyasele of Ohordua is null and void and without effect and it contravenes natural justice and his repugnant to Ohordua native law, custom norms and tradition”.***

He submitted that by the issuance of the Gazette in 2001 time begins to run against the Counter Claimant who became aware of its existence, the right of action thus accrued but went into a deep slumber till 5th March, 2018 to file this Counter Claim. He said that from 2001 to 2018 is seventeen years. Furthermore, that the Gazette Exhibit “F” is an act of a public officer. That ***Section 2(a) of the Public Officers (Protection) Act*** stipulates a three months’ time frame for bringing an action against public officers and it is based on the good reasoning that busy civil servants should not be distracted by having to answer frivolous and vexatious litigation if he fails to come within three months. He said that the cause of action of the Counter Claimant has become unenforceable, the same having become bare or an empty shell and he relied on the following decisions on the point: ***CBN v. Okojie (2015) 14 NWLR (Pt. 1479) 231. Also in Ibrahim v. Lawal (2015) 17 NWLR (Pt. 1489) 490***, the Supreme Court held that limitation law applies to Chieftaincy matters.

He therefore urged the Court to resolve issue 3 against the Defendants/Counter-Claimants.

In his final written address, the learned counsel for the Defendant/Counter Claimant, ***A.R.Azenabor Esq.*** formulated four issues for determination as follows:

- (i) Whether from the totality of evidence before Court; the Iyasele title of Ohordua is a hereditary title?***

- (ii) *Whether accession/succession to the throne of Iyasele of Ohordua is based on inheritance consonance with the native law, traditional, custom and culture of Ohordua; and*
- (iii) *Whether according to the native law, tradition and culture of Ohordua the Onogie of Ohordua can validly confer the Iyasele title on another person other than the heir apparent from the descendant and lineage of the Iyasele Ruling House in Idumu Iyasele, Ozenyon Ohordua; and*
- (iv) *Whether from the totality of evidence and exhibits, “F” & “R” before this Honourable Court the Chieftaincy title “Iyasele” in Ohordua Kingdom is two (2) “Iyasele of Ozenyen and Iyasele of Ohordua.*

Thereafter, the learned counsel argued issues I and II together, while issues 3 and 4 were argued seriatim.

ISSUES I & II

Arguing issues 1 and 2 together, counsel submitted that from the totality of evidence of parties before the court it is evidentially clear that the title of Iyasele of Ohordua in Ohordua kingdom is hereditary and its accession and succession is based on inheritance in consonance with the traditional, custom and culture of Ohordua.

He posited that the evidence of the Defendants/Counter Claimants revealed that the Chieftaincy title of Iyasele of Ohordua is hereditary, and exclusively reserved for the descendants of the Iyasele ruling house of Idumu Iyasele Ozenyen Ohordua. He said that this piece of evidence of the Defendants/counter-claimant was not in any way challenged neither controverted by the claimant.

He said that the claimant/ 1st Defendant and 2nd – 4th Defendant/counter-claim during cross examination affirmed and confirmed that the title “Iyasele of Ohordua” is hereditary and its accession is regulated by the native law, tradition and custom of Ohordua kingdom. He referred to the evidence of the claimant/1st Defendant by counter claim where he stated under cross examination thus:

“I am conversant with the tradition custom and culture of Ohordua. The Iyasele title is hereditary and before 2004 when I was conferred with the Iyasele title. I am aware that Iyasele title has been in existence and there was an Iyasele in Ozeyon Ohordua”.

He also referred to the 2nd – 4th Defendants sole witness by counter claim testimony who during cross-examination also admitted that the title of Iyasele in Ohordua kingdom is hereditary and its accession/succession is based on inheritance.

He submitted that facts admitted need no further proof and relied on the cases of *Alhassan V Ishaku (2016) 10 NWLR part 1520 pg 230 @ 298 – 299 para G-C; Chrome Air Service Limited & 2000 V Fidelity Bank Plc (2018) All FWLR (Pg 20) Pg 135 @ 141 R 8; and Atanda V. Ileasu (2013)6 NWLR Pt 1351 Pg 529 @ 551 para A.*

He submitted that since the parties are in agreement that the Iyasele title in Ohordua is hereditary, he urged the Court to resolve issue one in favour of the 1st - 2nd Defendants/Counter claimants.

Learned counsel submitted that if issue one is resolved in favour of the 1st – 2nd Defendants/Counter-claimants, it therefore behoves on the claimant/1st Defendant by counter claim to lead credible evidence before this Honourable Court that he is the heir apparent of late Ogbeide Akueta who until his death was the Iyasele of Ohordua to inherit/ ascend to the throne of Iyasele of Ohordua in line with the native law and custom and tradition of Ohordua. He relied on *Section 131(1) of the Evidence Act 2011*

He said that the Claimant did not led any evidence on the native law and custom of Ohordua people as it relates to the succession and ascension to the Iyasele title in Ohordua.

He said that the failure of the Claimant/1st Defendant by Counter claim, to call the kingmakers (members of council of chiefs in Ohordua) whom he claimed appointed him as Iyasele of Ohordua to give evidence is fatal to his case. More so, when the Defendant/Counter-claimant contended that he was not validly appointed as Iyasele of Ohordua in line with the custom and tradition of Ohordua people. He relied on the case of *Akano V Ilarin Emirate Council (2001) ALL FWLR (Pt 40) pg 52 @ 76* where the court held:

“From the state of pleading, Respondent should have called the kingmakers, whom he claimed have appointed him Bale of Oke–Oyi to give evidence. This is moreso, since he claimed to have enjoyed the support of a Kingmaker, since it is the case of the Defendants that the plaintiff was never at any time appointed by the kingmakers as laid down by the customary law in Oke-Oye, is very vital. Although, it is trite that the law does not fix any number of witnesses that a party should call to prove a point. It is clear from the state of pleadings that the part played by kingmakers in the appointment of a Bale for the town is very vital. They ought to have been called in the circumstances of the case...”

He pointed out that the Claimant alleged that he was appointed Iyasele of Ohordua by the Onogie and he relied on Exhibit “K” (minutes of meeting of Esan South Traditional Council ratifying his appointment). That throughout the length and breathe of this case, none of the Esan South East Traditional Ruler/Chief(s) or any Chief from the council of kingmakers in Ohordua was called to give evidence for him.

He submitted that the only deducible conclusion any discernable person will reach on Claimant’s failure to call any of the kingmakers/Chiefs in Ohordua or traditional ruler in Esan land with particular reference to Exhibit “K” is that the evidence of those person(s) would have been against him if called and he relied on *Section 166d of the Evidence Act 2022*.

On the Claimant’s allegation that the 2nd Defendant/Counter-Claimant is not the son and heir apparent of late Chief Ogbeide (Iyasele of Ohordua), he submitted that the Exhibit “N” celebration of life of Deaconess Princess Osehi Onodiana and Exhibit “P” (Master List of Ibhiedu Primary School Leaving Certificate Examination) are not the appropriate means of proof of a person’s paternity known to our law. He therefore urged the Court to discountenance the said Exhibits in this regard.

He submitted that the use of any name is exclusively reserved for the user. See *Eluwa and Eluwa (2013) SELR 22120*. That in the case at hand, the mere fact that the 2nd Defendant/Counter-claimant bore the name “Onodiana” in Exhibits “N” and “P” at a time does not mean that he is not the son and heir apparent of late Ogbeide “Iyasele of Ohordua”.

He submitted that proof of paternity of a person is by either the production of DNA medical certificate, evidence of relatives of the Parents of the person in issue or evidence of the party and parents themselves whose paternity is in issue.

He said that the Claimant/1st Defendant did not tendered any DNA medical certificate, neither did he called either parents of the 2nd Defendant nor his relatives as required by law in proof of the 2nd Defendant’s paternity. He therefore submitted that the Claimant has failed to discharge the burden of proof of the paternity of the 2nd Defendant/Counterclaimant as against the evidence of the Defendant/Counterclaimant.

He said that the 1st Defendant/Counterclaimant who is related to the 2nd Defendant, and the DW5 (Godwin Onodiana) sibling of same mother with the 2nd

Defendant/counterclaimant but different father, affirmed that the 2nd Defendant/counterclaimant is the son and heir apparent of late Ogbeide.

Moreover, counsel posited that there is no body from the Iyasele’s family or anywhere in the world claiming to be the son and heir apparent of late Chief Ogbeide other than the 2nd Defendant/counterclaimant.

Counsel referred to the evidence of the Defendant/counterclaimant and their witnesses in particular Chief Ihaza (DW3) , Chief Oliha (DW1) and Elder Egbeyon (DW2) (all of whom are members of Council of Chiefs in Ohordua who all confirmed the 2nd Defendant/counter claimant is the Iyasele of Ohordua having ascended the throne by inheritance in accordance with the native law and custom of Ohordua.

Counsel submitted that the court is enjoined to have recourse to any book or manuscript and native chief in deciding questions of nature law and custom and he relied on the cases of *Adedibu V Adewoyin (1951) 18 WACA 191*; and *Orugbo V Una (2002) 16 NWLR (pt 792) 175*.

He referred to the book titled “*AN ETHNOGRAPHIC ACCOUNT OF OHORDUA KINGDOM*” written by *DR. PHILIP ONAGWELE EMAFO, OFR*, an alleged indigene of Ohordua who is vast in the tradition, culture and custom of Ohordua. He said that at page 35 of the book, the author listed the major seven traditional hereditary chieftaincy titles in Ohordua and their designated quarter, village and Idumdau in Ohordua Kingdom as follows:

<u>Quarter</u>	<u>Village</u>	<u>Idumhum</u>	<u>Traditional Title</u>
<i>Eguare</i>	<i>Ogbenokhua</i>	<i>Ogbeihaza</i>	<i>The Ihaza</i>
<i>Uokhuen</i>	<i>Idigbon</i>	<i>Idumhun Ihiabo</i>	<i>The Oliha</i>
<i>Ozenyen</i>	<i>Idumhun Oke</i>	<i>Idunhun Iyase</i>	<i>The Iyase</i>
<i>Orekhiubhie</i>	-----	<i>Idunhun Okoesi</i>	<i>The Ugbobi</i>
<i>Ibhiedu</i>	<i>Idumhun-Eze</i>	<i>Idunhun Olian</i>	<i>The Eholor</i> “

Learned counsel referred to page 18 of the book where the author stated thus:
“The founder of Ozenyen was a warrior by name, Ozeyen with the nick name Akhibho Ozenyen was conferred with the title of Iyase, for his bravery, a title that is hereditary for his descendants in Ozenyen”.

Again counsel referred to another text book titled: ***“THE ESAN NATIVE LAW AND CUSTOM WITH ETHNOGRAPHIC STUDIES OF THE ESAN PEOPLE”*** written by ***DR. CHRISTOPHER GBELOKOTO OKOJIE, OFR LSM FICS, FMCGP, DIP, ATMF (Johns Hopkins) DSC (HON).*** at page 481 paragraph 3 under the sub heading ***Ozenyen (1953-659, 1963-615)*** the author stated that Ozenyen is the traditional home of the Iyasele title adding that Akhibho was the first traditional Iyasele of Ohordua.

Learned counsel maintained that it is an aberration and alien to the custom and tradition of Ohordua for the Onogie to appoint / confer the Iyasele title on anybody such as the claimant/1st Defendant by Counter claim in this case who is not an Ozenyen person neither a decedent of Akhibho, Iyasele Ruling House nor the heir apparent of late Ogbeide who until his death was the Iyasele of Ohordua from the Iyasele Ruling House, Ozenyen Ohordua.

He said that the claimant/1st Defendant by Counter claim told the Court during cross-examination that he is neither a member of the Iyasele Ruling House in Ozenyen nor was his ancestor/ descendant ever be conferred with the title of Iyasele before him.

He submitted that the Iyasele title is a creation of Ohordua custom and a sacred traditional title in Ohordua kingdom exclusively reserved for the Akhibo descendant of the Idunhum Iyasele, Ozeyen Ohordua.

He urged the Court to resolve issue two in favour of the Defendants/Counter Claimant.

ISSUE 3

Whether according to the native law, tradition and culture of Ohordua the Onogie of Ohordua can validly confer the Iyasele title on another person other than the heir apparent from the descendant and lineage of the Iyasele Ruling House in Idum Iyasele, Ozenyon Ohordua.

Learned counsel posited that according to the tradition and custom of Ohordua an Iyasele is “born” and not “made”. That accession and succession to the throne of Iyasele title in Ohordua is by inheritance and never by appointment. That from time immemorial in the history of Ohodua the title of “Iyasele” has always revolved

around the Iyasele ruling house of Ozenyen Ohordua on the basis of inheritance among the descendants of Akhibho and he urge the Court to so hold.

He submitted that Exhibit “Q”, (Digital photograph of Council of Chiefs including the Onogie of Ohordua and Exhibit “I: (Esan South East Almanac of Traditional Rulers and Chief in Esan Land) are clear attestation and affirmation of the recognition of the 2nd Defendant/Counterclaimant through his regent 1st Defendant (Isaac Itama) whose photograph appeared in the said exhibits as the traditional Iyasele of Ohordua.

He submitted that a Gazette does not cure legal defect inherent in an invalid appointment. See *Attahiru V Bagudu (1998) 3 NWLR Pt 543 Pg 667 paras G-H*

That in the instant case, where the appointment of the Claimant as Iyasele of Ohordua is in contravention of the native law, custom and tradition of Ohordua people as its relates to the ascension and succession of the Iyasele title, the gazette is invalid and he urged the Court to so hold.

He therefore urged me to resolve issue 3 in favour of the Defendants/Counterclaimants.

ISSUE 4

Whether from the totality of evidence and exhibits, “F” & “R” before this Honourable Court the Chieftaincy title “Iyasele” in Ohordua Kingdom is two (2) “Iyasele of Ozenyen and Iyasele of Ohordua”.

Counsel submitted that from the evidence before this Honourable Court it clear that the Iyasele title in Ohordua is one which have its traditional base in Ozenyen Ohordua.

He further submitted that all the chieftaincy titles contained in Exhibit “R” were replicated in Exhibit “F”. That the inscription of “Ohoruda” to the title Iyasele in Exhibit “F” is not peculiar to the Iyasele title only rather, it was inserted in all the Chieftaincy titles in Ohordua and it is not to create a different Iyasele title in Ohordua kingdom as the Claimant wants this Honourable Court to believe.

He therefore submitted that the titles of “Oliha of Uokuen”, “Ihaza of Eguare”, “Iyasele of Ozenyen” and the “Eholo of Ibhiedue” etc as contained in Exhibit “R” are one and the same in substance and form with the “Oliha of Ohordua”, “Ihaza of

Ohordua”, “Iyasele of Ohordua” and “Eholo of Ohordua” etc contained in Exhibit “F”.

He contended that Exhibit “F” is not an amendment to the native law, custom history norms and tradition of the Ohordua people on the ascension/succession to the throne of Iyasele of Ohordua.

He submitted that Exhibit “G” (certificate of Registration of Traditional Chieftaincy title) was issued by the 2nd – 4th Defendant to the Claimant/1st Defendant by Counterclaim in error in total disregard to the spirit of fair hearing of the Defendants/Counterclaimants and contravention to the native law, custom and tradition of Ohordua people which postulate that ascension/succession to the throne of Iyasele in Ohordua, is by inheritance and not by appointment.

He said that the 2nd – 4th Defendants’ witness by Counterclaim told the Court during cross examination that the Defendants/Counterclaimants were never contacted to ascertain the veracity of what they were told by the Onogie who is not a member of the Defendants/Counterclaimants’ family that late Chief Ogbeide was not survived by a male child.

He submitted that the court will not accept the evidence of a witness who sets out to deliberately mislead the court and he relied on the cases of: *Fatunbi V Olanloye (2004) 12 NWLR (Pt. 887) 229 at 247; and Oguntayo v Adebutu (1997) 12 NWLR Pt. 531) 81 at 94 paras A-B.*

Finally, he urged the Court to dismiss the claim of the Claimant/1st Defendant and grant the Defendants/ Counterclaimants the relief sought as per their counter claim.

In his final written address, the learned counsel for the 2nd to 4th Defendants to the Counter-Claim, *J.I.Eboh Esq.* formulated a sole issue for determination as follow:

“Whether in the circumstances of the case the Counter Claimant has proved his case for the grant of reliefs sought in the counter claim.”

Arguing the sole issue for determination, learned counsel submitted that the principle of primogeniture is what applies to the title of Iyase of Ohordua relied on **BLACK’S LAW DICTIONARY EIGHT EDITION by Bryan A. Garner at P. 3773**, for the definition of primogeniture.

He submitted that the said principle of primogeniture will not inure in favour of the Counter Claimant because the last holder of the Iyase of Ozenyen, the late Ogbeide died without any male child and this evidence was not controverted by the Counter Claimant. To support this submission, he relied on the case of ***JIMOH KUTI & ORS. V. ADEBAYO BAKARE ALASHE & ORS (2005)17NWLR PT. 955 P. 625 AT 651-652 PARAS H-D.***

He submitted that it is trite law that to qualify as valid, an admission should be direct, unequivocal and unambiguous. He submitted that the admission of facts which the Counter Claimant alluded to in his argument and claimed that the 2nd-4th Defendants to the Counter Claim admitted to is misconceived. He said that what the said witness said in addition to admitting that the title of Iyase of Ozeyen is hereditary was that the last holder of the title having died without any male child lost the right to have an heir to the stool. He said that since he testified that Ogbeide died without any male child, this does not amount to any admission of the claim of the Counter Claimant whatsoever.

Furthermore, learned counsel submitted that the witnesses fielded by the Counter Claimant were not credible as they were suborned to lie before the honourable court. He urged the Court to reject their evidence and he relied on the case of ***MR. MICHAEL OYEDIRAN AJIBI V. JOSEPH OLAWE & ANOR. (2003) 8NWLR PT. 822, P. 237 AT P. 273 PARA D.***

Counsel submitted that once a chieftaincy declaration is registered and published, it has a statutory effect on the community. That the conferment of the chieftaincy title of Iyase of Ohordua on the Claimant, Chief Isaac Ikekuamen is effective and thus has the force of law. That the said title is a new creation and different from that of Iyase of Ozeyen which is now extinct and he relied on the cases of ***CHIEF M.A. OYELAMI & OTHERS V. MILITARY ADMINISTRATOR OF OSUN STATE & ORS. (1998)4NWLR PT. 547 P. 624 AT 635 PARA C;*** and ***CHIEF AYOOLA ADEOSUN V. THE GOVERNOR OF EKITI STATE & ORS. (2012)4NWLR PT 1291 P. 581 AT 600 PARA D-F***

Counsel posited that the prescribed authority who is empowered to confer the chieftaincy title of Iyase of Ohordua is the Onogie of Ohordua and he rightfully exercised such powers by conferring same on the Claimant. He said that Mr. Odion Osime, the witness of the 2nd-4th Defendants to the Counter Claim confirmed the propriety of the process in his testimony that the right procedure was followed which led to the issuance of certificate to the Claimant. More so, that the Counter

Claimant's witnesses in their testimonies confirmed that the Onogie of Ohordua who conferred the traditional title of Iyase of Ohordua to the Claimant is the prescribed authority. He therefore urged the Court to hold that the appropriate procedure has been followed and relied on the case of **CHIEF M.A. OYELAMI & OTHERS V. MILITARY ADMINISTRATOR OF OSUN STATE & ORS (SUPRA) AT P. 635 PARA B** where the Court held that it is an offence under the law for anyone to parade himself as chief when such person is not installed by the prescribed authority. He also relied on **S. 20 (1) of the Traditional Rulers and Chiefs Edict of 1979**.

Counsel submitted submit that the Counter Claimant has failed to prove his counter claim on the balance of probabilities and that same should be dismissed by this honourable Court. That he has failed to prove that the chieftaincy title of Iyase of Ozeyen still exists and that the Onogie of Ohordua being the prescribed authority is not empowered to confer the Iyase of Ohordua on the Claimant. He relied on the case of **NNAEMEKA OKOYE 7 ORS. V. OGUGUA NWANKWO (2014)15NWL R PT 1429 P. 93 AT 125 C—D**.

In conclusion, he urged the Court to dismiss the Counter Claim.

Upon receipt of the Claimant's written address, the learned counsel for the Defendant/Counter-Claimant filed a Reply on Points of Law which he also adopted as part of his arguments in defence of this suit.

In his reply on points of law the learned counsel submitted that the Chieftaincy title "Iyasele in Ohordua Kingdom" has been in existence since the creation of Ohordua and the title has its seat in Ozenyen Ohordua. He posited that the Second schedule on the **Traditional Rulers and Chief Edict 1979** (Exhibit "R") specifically listed the seat title of Iyasele to be Ozenyen in Ohordua in consonance with the Ohordua native law, custom and tradition. He further maintained that all the chieftaincy titles listed in Exhibit "L" have been in existence in Ohordua ever before 1994 and were recognized/gazette in the second schedule to the Traditional Rulers and Chiefs Edict 1979.

He further submitted that Exhibits "L" "B" "C" and "D" relied upon by the Claimants are nothing but misrepresentation of facts and repugnant to the custom and tradition of Ohordua as it relates to the ascension to the throne of Iyasele in Ohordua Kingdom and he urged the Court to discountenance the said Exhibits.

It is the submission of counsel to claimant that defendant/counterclaimants – counter claim is statute barred.

He also submitted on any action emanating from inheritance under Customary Law being statute barred based on the provision of the law of limitation of the state. He referred to Section 1 (2) of the Limitation Law Bendel State (Cap 89 Laws of Bendel State 1979) now applicable to Edo State which provide thus:

“Nothing in this law affects action in respect of the title of land or any inheritance in land by customary tenure or in respect of any matter which is subject to the jurisdiction of a customary court, marriage, family status, guardianship of children, inheritance or disposition of property on death.”

He referred to the case of ***LAWAL OSULA V LAWAL OSULA (1995) 10 SCNJ 84*** where the Court held thus:

“...the succession to Chieftaincy title of the eldest son of a hereditary chief, the position of his Igiogbe seat and abode as Chief the devolution of his estate that are entirely governed by the Benin Provisions of the Limitation Law at S. 20(1) will not arise. This is because such action are shielded from being statute barred by the express provision of S. 1(2) of the Limitation Law of Bendel State”.

Relying on ***Section 1(2) of the Limitation Law of Bendel State*** and the principle in ***Osula v Osula (Supra)*** he urged the Court to discountenance the submission and authority cited by the Claimant Counsel to the effect that the Defendant counterclaim is statute barred.

He submitted that Defendants/ Counterclaimants’ cause of action arose in 2016 when the Claimant first arrested the 1st Defendant/Counterclaimant through the Edo State Police Headquarter on the allegation of impersonation as the Iyasele of Ohordua.

He submitted that time begins to run against a Claimant from the day such Claimant became aware of the injury /breach that form the basis for the cause action. See ***SIFAX NIGERIA LTD V MIGFO NIGERIA LTD (2015) 18 NWLR (PT 1333) PG 555***. He alleged that the Counter/Claimant became aware of the cause of action in his counterclaim in 2016 when he was first arrested by the Claimant for an alleged impersonation as Chief Iyasele of Ohordua.

He submitted that time cannot begin to run against Defendant/Counterclaimant based on Exhibit “F”, because Claimant name was not

in any where gazetted as the Iyasele of Ohordua in the said Exhibits. Rather, it was the title itself “Iyasele of Ohordua” which title was hitherto contained in Exhibit “R” that was replicated in Exhibit “F” consequent upon the creation of Edo State from Bendel State.

He submitted further that the process culminating in the appointment and installation of the claimant by the Onogie of Ohordua as the Iyasele of Ohordua is repugnant to the custom and tradition of Ohordua vis-à-vis the *twin pillars of Justice-Nemo Judex in causa sua* (meaning that a person cannot be a judge in his own case) and *alteram partem* which literally means that both parties to a dispute must be heard. and he relied on the cases of **JUDICIAL SERVICE COMMISSION BENDEL STATE & ANOR vs MOSES ALAKA (1982) FCA/B/59/92 delivered on September 8, 1982; and LEKWOT V JUDICIAL MIBUNAL (1993)2 NWLR (PT 276) 410.**

Furthermore, he submitted that the action of the 2nd – 4th Defendants is a violation to the Fundamental Human Right of Fair Hearing of the Defendants/Counter-claimants as guarantee in **section 36 of 1999 constitution of the Federal Republic of Nigeria.**

Upon receipt of the final written address of 2nd to 4th Defendants’ to Counter-Claim, the learned counsel for the Defendant/Counter-Claimant filed a Reply on Points of Law which he also adopted as part of his arguments in defence of this suit. The arguments which he canvassed therein are similar to the arguments already captured above.

I have carefully considered the evidence adduced by the parties in this suit, the Issues for Determination adopted by the parties and the arguments of the learned counsel for the parties. The Issues for Determination formulated by the parties appear quite germane to the determination of this suit but they appear a bit prolix and verbose. I will therefore condense them into two issues as follows:

- 1. WHETHER THE CLAIMANT HAS PROVED HIS CLAIM ON THE BALANCE OF PROBABILITY TO ENTITLE HIM TO THE RELIEFS SOUGHT; and**
- 2. WHETHER THE 2ND DEFENDANT/COUNTER-CLAIMANT HAS PROVED HIS COUNTER-CLAIM ON THE BALANCE OF PROBABILITY TO ENTITLE HIM TO THE RELIEFS SOUGHT.**

Having formulated the foregoing Issues for Determination, I will proceed to resolve them *seriatim*.

ISSUE 1:

WHETHER THE CLAIMANT HAS PROVED HIS CLAIM ON THE BALANCE OF PROBABILITY TO ENTITLE HIM TO THE RELIEFS SOUGHT.

It is settled law that in civil actions, the burden of proof is on the party who asserts a fact, to prove same. The standard of proof required is on the preponderance of evidence and the balance of probabilities. See the cases of: *Longe vs. F.B.N. Plc. (2006) 3 NWLR (Pt.967) 228; and Udo vs. Essien (2015) 5 NWLR (Pt.1451) 83 at 87.*

Furthermore, it is trite law that a Court must consider the proof of the case by the Claimant in a Chieftaincy matter before considering the case of the Defendant and not otherwise. See the following decisions on the point: *JOKONOLA V MIL.GOV. OYO STATE (1996) 5 NWLR (PT 446) 1 SC; FEDLATTAH V AREWA TEXT LTD (1997) 8 NWLR (PT 518) 546 SC; OTUO V NTEOGWUILE (1996) 4 NWLR (PT.440) 56 CA;and AKANO V. ILORIN EMIRATE COUNCIL & ORS (2000) LPELR-11972(CA) (PP. 49 PARAS. A)*

In the instant suit, the Claimant is seeking a declaration that he is the Iyase of Ohordua Kingdom by virtue of his appointment by His Royal Highness, the Onojie of Ohordua Kingdom in Esan South East Local Government Area of Edo State and the same having been gazetted.

Again it is settled law that the power to appoint a Chief in accordance with the customs and traditions of the people belongs exclusively to the Kingmakers. See *Amuda vs. Adelodun (1997) 5 NWLR (pt.506) 480 at 487; and Aliyu vs. Ibrahim (1997) 2 NWLR (pt.489) 571 at 586.*

In the instant suit the Claimant's case is that he was appointed by the Onojie of Ohordua to assume the position of Iyase of Ohordua, a newly created Chieftaincy title. He led evidence to show how the chieftaincy title of Iyase of Ohordua was newly created, approved and was for the first time in the history of Ohordua conferred on the Claimant, who is the first holder of this hereditary title. He tendered a letter dated 14th March, 1994 as Exhibit "L" wherein the Onojie of Ohordua specifically requested for the approval and recognition of the following new chieftaincy titles in Ohordua Kingdom:

1. CHIEF OJOMON OF OHORDUA;
2. CHIEF IYASELE OF OHORDUA;
3. CHIEF OYAKHIRE OF OHORDUA;
4. CHIEF INNEH OF OHORDUA;
5. CHIEF ERO OF OHORDUA;
6. CHIEF OKAKULO OF OHORDUA;
7. CHIEF ESON OF OHORDUA; and
8. CHIEF OLOKUN OF OHORDUA

He also tendered a letter dated 9th May, 2001 as Exhibit “D”, where the Onojie applied to the Directorate of Local Government and Chieftaincy Affairs, to enable him register the Claimant and the inclusion of the title of Iyase of Ohordua in the second schedule to the Traditional Rulers and Chiefs Edict 1979.

He also tendered a letter dated 27th of June, 1994 addressed to the Onojie by the Esan South East Local Government Council, admitted as Exhibit A, where the Council conveyed the approval new titles created by the Onojie. He tendered a letter dated 11th of November, 1995 as Exhibit “B”, whereby the title of Iyase of Ohordua was conferred on the Claimant by the Onojie of Ohordua and the Esan South East Local Government.

Furthermore, the Claimant’s title was published in a Government Gazette which was admitted as Exhibit F and he was issued a certificate of registration vide Exhibit “G”.

From the evidence adduced by the Claimant in this suit, it is apparent that the Claimant’s appointment as the Iyase of Ohordua has no bearing with the former title of Iyasele of Ozeyen which the Claimant maintains has become extinct because of the absence of a male from that lineage to perpetuate the stool.

At the trial, the Claimant led oral and documentary evidence to show that the new title of Iyase of Ohordua is different from the previous title of Iyase of Ozeyen. In Exhibit “D”, the Onojie explained the difference thus: “--- *It is necessary to explain that the Iyase of Ozeyen which the petitions are quarreling about is different from the Iyase of Ohordua. That title has not been given to anybody. It is my wish that it will be done in the future on any worthy citizen from the quarter*”.

Furthermore, the Claimant led copious evidence to show that the title of Iyase of Ozeyen is now extinct as clearly stated by the prescribed authority, the Onojie of Ohordua in Exhibit “L”.

Furthermore, while disputing the Claimant's case, the Defendants maintained that inheritance to the throne of Iyase of Ozenyen is by primogeniture that is from father to son. However, the Claimant consistently maintained that the late Iyase of Ozenyen, Chief Ogbeide Akueta died without any male child to succeed him leading to the irreversible conclusion by the Onojie of Ohordua that the line is now extinct.

At the trial, the 1st and 2nd Defendants tried to convince the Court that the title of Iyase of Ozenyen is the same as that of Iyase of Ohordua. They maintained that that the title of Iyasele of Ohordua in Ohordua kingdom is hereditary and its accession and succession is based on inheritance in consonance with the traditional, custom and culture of Ohordua and exclusively reserved for the descendants of the Iyasele ruling house of Idumu Iyasele Ozenyen Ohordua.

I have carefully examined the two books relied upon by the learned counsel for the Defendant/Counter-Claimant in a bid to convince the Court that the title of Iyase of Ohordua is not a new one. To wit:

- 1) ***“AN ETHNOGRAPHIC ACCOUNT OF OHORDUA KINGDOM”*** by ***DR. PHILIP ONAGWELE EMAFO, OFR; and***
- 2) ***THE ESAN NATIVE LAW AND CUSTOM WITH ETHNOGRAPHIC STUDIES OF THE ESAN PEOPLE”*** by ***DR. CHRISTOPHER GBELOKOTO OKOJIE, OFR LSM FICS, FMCGP, DIP, ATMF (Johns Hopkins) DSC (HON). at page 481 paragraph 3 under the sub heading Ozenyen (1953-659, 1963-615).***

From what I gleaned from the two publications, it is difficult to conclude that the original title was that “Iyase of Ohordua” and not “Iyase of Ozeyen”. I think the matter is actually laid to rest by virtue of the provisions of the ***Second Schedule to the Traditional Rulers and Chief's Edict, of 1979*** before it was amended. In the list of chieftaincy titles under the Ohordua Clan at ***page A112*** of the old Edict which was admitted as Exhibit R at the trial, the previous title was clearly stated as ***“The Iyasere of Ozenyen”***. Thus, it is evident that the title under dispute is a brand new one, which was created after the old one became extinct for want of a successor.

Furthermore, at the trial, the 2nd Defendant attempted to trace his lineage to the said Chief Ogbeide Akueta. However, the Claimant countered this attempt by tendering page 5 of Exhibit “N” the booklet on the celebration of life of late Princess Osehi Onodiana, where the 2nd Defendant was listed as “Eld. Prince Osegha Onodiana” the son of one Pa. Onodiana. The Claimant further buttressed the point by tendering Exhibits “O” and “P” that is the master list of 1976/1977 where the 2nd

Defendant's name is Onodiana Osegha Aghedo and Exhibit "P" a letter of identification from Ibhiedu Primary School, Ohordua which letter shows that the name Onodiana Osegha Aghedo wrote the Primary Six Examination with Examination No. 000846 and Certificate Number 206650. These pieces of documentary evidence on the identity of the 2nd Defendant were not rebutted at the trial. As a matter of fact, the 2nd Defendant did not testify at the trial to clarify the controversy surrounding his paternity.

The Defendants failed to tender any document of the 2nd Defendant where he bears the name "Ogbeide." It is settled law that documentary evidence is the best form of evidence in proof of a case. See also *ARIJE V. ARIJE & ORS (2018) LPELR-44193(SC)* *IBRAHIM V. ABDALLAH & ORS (2019) LPELR-48984(SC) (PP. 24-25 PARAS. B)*.

Upon a juxtaposition of the evidence adduced by the Claimant with that of the Defendants, I am of the view that the preponderance of evidence is on the side of the Claimant as it relates to the issue under consideration. The version of the Claimant is more credible, the Claimant adduced formidable oral and documentary evidence to prove that the chieftaincy title of Iyase of Ozeyen has become extinct and the Onojie of Ohordua who is the undisputed prescribed authority followed due process to appoint the Claimant as the new Iyase of Ohordua Kingdom.

In the event, I hold that the Claimant is entitled to a declaration that he is the Iyase of Ohordua Kingdom.

On the relief for an order of perpetual injunction restraining the Defendants from parading themselves as the acting Iyase of Ohordua Kingdom, it is settled law that the grant of the relief of perpetual injunction is a consequential order which should naturally flow from the declaratory order sought and granted by court. The essence of granting a perpetual injunction on a final determination of the rights of the parties is to prevent permanently the infringement of those rights and to obviate the necessity of bringing multiplicity of suits in respect of every repeated infringement. See the following decisions on the point: *Commissioner of Works, Benue State vs. Devcon Ltd. 1988 3 NWLR pt. 83, pg. 407*; *LSPDC vs. Banire 1992 5 NWLR pt. 243 at pg. 620*; *Afrotec vs. MIA (2001) 6 WRN pg. 65*; *Globe Fishing Industries Ltd. vs. Coker (1990) 7 NWLR pt. 162. Pg. 265*; and *GOLDMARK (NIG) LTD & ORS V. IBAFON CO LTD & ORS (2012) LPELR-9349(SC)(PP. 65 PARAS. B)*.

On the award of damages, it is settled law that the primary objective of an award of damages is to compensate the Claimant for the harm done to him or a possible secondary objective is to punish the Defendant for his conduct in inflicting the harm suffered. It has to be emphasized that the award of damages is purely within the powers of the trial Court, the power is exercised after a judicious estimation of the loss to the victim, once a breach has been established; See: **AHMED & ORS V CBN (2012) LPELR-9341-SC and HAMZA V KURE (2010) LPELR-1315-SC.**

In the instant case, the Claimant led evidence of the embarrassment and humiliation the Defendants have caused him by their act of parading themselves as the acting Iyase of Ohordua kingdom including the publication of the 1st Defendant's photograph as contained in the 2016 calendar of Traditional Ruler/Council of Chiefs in Ohordua Kingdom in Esan South-East Local Government of Edo State. I think the Claimant is entitled to some reasonable compensation for his suffering.

Sequel to the foregoing, I resolve issue one in favour of the Claimant.

ISSUE 2:

WHETHER THE 2ND DEFENDANT/COUNTER-CLAIMANT HAS PROVED HIS COUNTER-CLAIM ON THE BALANCE OF PROBABILITY TO ENTITLE HIM TO THE RELIEFS SOUGHT

In view of my findings in the resolution of Issue One, it is evident that the 2nd Defendant/Counter-Claimant has failed to prove his Counter-Claim on the balance of probability. Consequently, Issue Two is also resolved in favour of the Claimant.

Having resolved the two issues in favour of the Claimant, I hold that the Counter-Claim is dismissed and the Claimant's claims are granted as follows:

- 1. A DECLARATION that the Claimant is the Iyase of Ohordua Kingdom by virtue of his appointment as the Iyase of Ohordua Kingdom by His Royal Highness, the Onojie of Ohordua Kingdom in Esan South East Local Government Area of Edo State and the same having been gazetted;***
- 2. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendants from parading themselves as the acting Iyase of Ohordua Kingdom or in any other nomenclature purporting to be the acting Iyase of Ohordua***

Kingdom or from carrying out the duties/functions of the Claimant as the lyase of Ohordua in any manner whatsoever, howsoever and wheresoever; and

- 3. N3, 000, 000.00 (Three Million Naira Only) being general damages for the embarrassment and humiliation the Defendants have caused the Claimant by their act of parading themselves as the acting lyase of Ohordua kingdom including the publication of the 1st Defendant's photograph as contained in the 2016 calendar of Traditional Ruler/Council of Chiefs in Ohordua Kingdom in Esan South-East Local Government of Edo State.*

Costs is assessed at N200, 000.00 (Two Hundred Thousand Naira) in favour of the Claimant.

P.A.AKHIHIERO
JUDGE
14/02/2023

COUNSEL:

- 1. CHIEF D.O.OKOH SAN.....CLAIMANT**
- 2. A.R.AZENABOR ESQ.....DEFENDANTS/COUNTER-CLAIMANTS**
- 3. J.E.EBOH ESQ.....2ND – 4TH DEFENDANTS BY COUNTER-CLAIM**

