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 FRIDAY THE
24TH DAY OF NOVEMBER, 2023

BETWEEN ***SUIT NO: HCU/22/2013***

CLEMENT EJIANRE ----------CLAIMANT

AND

(1) MRS. ELIZABETH RAPHEAL OMONKHODION } ***DEFENDANTS***

(2) ENGR. RAYMOND OMONKHODION

JUDGMENT

The extant pleadings of the parties in this suit are the Claimant's Amended Statement of Claim filed on the 6th of April, 2018, the Defendants' Amended Joint statement of Defence/Counter-Claim filed on the 8th of October, 2021 and the Claimant's Reply to the Statement of Defence/Defence to Counter–Claim filed on the 18th of April, 2016.

In proof of his case, the Claimant called four witnesses and testified for himself. The Claimant's case as can be gleaned from his evidence is that he claims to be the owner in possession of a parcel of farm land measuring 2.035 hectares lying and situate off Steven Oghudu Road off Amedokhian Road Uromi which said land is very well known to the Defendants. The land in dispute is more particularly delineated in litigation survey plan No. AJETS/ED2010/D005 dated 2/11/2010 and made by Surveyor J.E. Anao,

registered surveyor, tendered and admitted in evidence in this suit as Exhibit "C".

According to the Claimant, his grandfather, the Late Pa. Oleabhiele Ufua was among the early settlers at Ukoni, Uromi and was the person who deforested the land about one hundred years ago and planted rubber trees, cocoa and kolanut trees on the land.

He alleged that in his lifetime, his grandfather shared the land among his children namely: Afama Ejianre who was the Claimant's father and Odine. After receiving his portion, the Claimant's father allegedly took possession, planted more economic trees on the land and built a hut on the farmland.

The Claimant alleged that the parcel of land now in dispute is the part that was given to his father by his grandfather. He maintained that his late father was in continuous and uninterrupted possession of the land until he died in 1970.

That upon the death of his late father in 1970, the Claimant as the eldest surviving son of his father allegedly performed his father's burial rites and inherited his late father's property in accordance with Esan Native Laws and Customs.

Upon inheriting the land, the Claimant allegedly took possession of the land including the crops, rubber trees, hut and started maintaining same and tapping the rubber trees without any disturbance until he left for Benin City in 1977.

He alleged that when he left for Benin City in 1977, other family members continued to tap the rubber trees and harvest other crops like cocoa and kolanuts on the land since 1977 without any disturbance from any person until sometime in March 2009 when the 1st Defendant encroached on a part of the land in dispute by transferring same to a third party. He said that he reported the 1st Defendant to the Ukoni Youth Council, who arbitrated and warned the 1st Defendant to steer clear from the land in dispute.

He further alleged that in March 2010, the 1st Defendant hired armed thugs who brought some unknown workmen to cut down the rubber trees, cola nut trees, cocoa trees, plantain suckers and destroy the farm hut on the land. He reported the matter to the police but before the police could visit the scene the

1st Defendant had set everything on fire. He said that the 1st Defendant was later arrested in March 2010.

According to the Claimant, the economic trees destroyed by the 1st Defendant were part of his source of income. He alleged that he makes nothing less than N1.5m as proceeds from sales of the economic trees from the said land yearly and he gave a breakdown of the economic trees destroyed by the 1st Defendant.

In defence of this suit and in proof of their Counter-Claim, the Defendants' testified for themselves and called two witnesses. The Defendants' case is that one Pa Omokhodion, the 2nd Defendant's grandfather, was the person who deforested the vast land situate and lying at Eko-Omokhodion, Ukoni, Uromi and was in undisturbed possession of same until he died many years ago.

They alleged that upon the death of Pa. Omokhodion, the 2nd Defendant's late father, Mr. James Omokhodion, inherited the said vast land and remained in undisturbed possession of the said land until he died.

The 2nd Defendant alleged that upon the death of his father, he being the eldest son, inherited the said vast land including the land in dispute in accordance with Esan native law and custom and has been in an undisturbed possession without any let or hindrance.

The 2nd defendant alleged that since he inherited the land, some of his family members including the 1st Defendant have been farming on the land in dispute without let or hindrance.

The Defendants maintain that the Claimant's father did not deforest the land in dispute or any land but was a mere palm wine tapper. Furthermore, that neither the Claimant nor his brothers have ever entered the land in dispute or tapped rubber thereon. They stated that the Claimant has no economic trees on the land now in dispute and none of his economic trees were ever destroyed by the 1st Defendant.

According to the Defendants, sometimes in March, 2010 the Claimant and one Mr. Ekpoba trespassed into the land in dispute and attempted to share it but they were promptly reported to the palace at Uromi by the Omokhodion family.

They alleged that the palace summoned both the Claimant and the said Mr. Ekpoba to the palace to defend their action but the Claimant refused to honour the summons. However, Ekpoba appeared before the palace and after much deliberation, the palace found as a fact that the land in dispute belongs to the Omokhodion family and subsequently fined Mr. Ekpoba and warned him not to enter the land again.

The Defendants denied ever using thugs to destroy any crops belonging to the Claimant.

The 2nd defendant alleged that sometime in 2005 one Stephen Oghudu and others trespassed on a part of his vast land and destroyed some of the economic trees on the vast land and cassava farm of the 1st Defendant. That based on the alleged trespass, the 2nd Defendant wrote a petition to the Assistant Inspector General of Police, Zone 5, Benin City, for his intervention and investigation. That when the trespassers were not relenting, he filed an action in this court in Suit No. HCU/39/2006 and the Court gave judgment in favour of the Defendant's family on the 26th of July, 2016. The said Judgment was tendered and admitted as Exhibit "D" at the trial.

In conclusion, the 2nd Defendant maintained that he is the owner and in possession of the said vast land situate at Eko-Omokhodion – Ukoni, Uromi covering an area of 15.594 hectares which is verged green in the Defendants' Litigation Survey No. ISO/ED/D29/2014 dated 27TH May, 2014. The said Survey Plan was admitted as Exhibit "E" at the trial.

Upon the conclusion of evidence, the learned counsel for the parties filed their final written addresses which they adopted as their final arguments.

In his Final Written Address, one ***Okenwa Patrick Michael Esq.*** filed a final written address on behalf of the Defendant's counsel; ***Idemudia Ilueminosen Esq.*** In his written address, the learned counsel formulated two issues for determination as follows:

1) ***Whether the Claimant has proved his case to be entitled to his reliefs sought in this suit; and***
2) ***Whether the Defendants (particularly 2nd Defendant) have proved their case to be entitled to the reliefs sought in the Counter-Claim.***

Thereafter, the learned counsel argued the two issues together

Learned counsel posited that in a claim for a declaration of title to land such as this, the burden is on the Claimant to establish his case based on the evidence adduced by him. He submitted that the Claimant must rely on the strength of his case and not on the weakness of the Defendant's case and he relied on the cases of ***OYENEYIN V.AKINKUGBE (2010) 4 NWLR (PT.1184) 265 particularly at Page 295*** and ***ACN V. NYAKO (2015) 18 NWLR (PT. 149p. 352 at 423 Paras B-C.***

Learned counsel also posited that the Claimant must establish the precise identity of the land for which he seeks a declaration of title and he relied on the cases of ***ONU V. AGU (1996) 5 NWLR (PT. 451) P. 652 at 662 para E*** and ***NWABUOKU V ONWORDI (2006) ALL FWLR (PT. 331) P.1236 at 1246-1247***.

He posited that in the instant case, the Claimant admitted that he does not know the land for which he is seeking a declaration and he referred to Exhibit "B" which is the record of proceedings. Again, he posited that while testifying on the 10th of July, 2018, the Claimant stated that the size of his purported land is "4 hectares which is 20 plots, 100feet by 100feet each". However, he said that the Claimant's witness (CW 3- Mr. Anayo, Surveyor) disagreed with the Claimant and stated that the size of the land is not 4 hectares but 2.035 hectares.

He submitted that the Claimant has failed in his first duty to clearly establish the exact parcel of land for which he seeks a declaration so his claim for a declaration cannot be granted. He cited the cases of ***NWOKIDU V. OKANU (2010) 3 NWLR (PT. 1181) P. 362*** and ***NWABUOKU V.ONWORDI (SUPRA).***

Furthermore, he submitted that the Claimant's description of the land he is claiming contradicts his Litigation Survey Plan Exhibit "C' and his claim ought to be dismissed. See ***ADDAH V.UBANDAWAKI (2015) ALL FWLR (PT. 775) P. 200 at 215 para F-H***.

Counsel enumerated the five ways of proving ownership of land as established in the case of ***IDUNDUN V.OKUMAGBA (1976) 9-10 S.C 227***.

He maintained that proof of one of the five ways is sufficient.

He posited that from the Claimant's pleadings and evidence, he relied on traditional evidence but failed to give sufficient information in his pleadings and

evidence as regard the ownership of the land and the line of succession to himself which is the foundation of the Claimant's case. See ***ANYAFULU V. MEKA (2014) 7 NWLR (PT. 1406) P.396 at 430.***

Counsel posited that the Claimant in his pleadings alleged that his late grandfather, Oleabhiele Ufua deforested the "land" and planted economic crops and that his said late grandfather "in his life time, shared the land to his children namely: Afam Ejianre (Claimant's father) and Odine". However, he pointed out that there is no evidence establishing the purported sharing of the land to Afam, the Claimant's father and Odine as alleged by the Claimant. He said that no member of the Afam and Odine's family was called to attest to the fact that there was a land deforested by their father (Oleabhiele Ufua) and that same was shared among his children as alleged and that the land in dispute forms part of the land allegedly deforested by their late fathers.

He posited that it is settled law that once a party relies on traditional evidence in proof of his title, he must with satisfactory evidence establish how he derived the particular title pleaded and claimed by him by pleading and establishing who founded the land, how he founded the land and the particulars of the intervening owners through whom he claims. He said that the party must not leave any gaps in the line of the succession until it got to him. See ***OHIAERI V. AKABEZE (1992) 2 NWLR (PT.221) P.1 NRUAMAH V. EBUZOEME (2013) LPELR- 19771 (SC)***.

He maintained that in the instant case, the Claimant merely pleaded that the land allegedly deforested by his grandfather was shared among his children including his late father without more. He said that the size of land deforested by his grandfather, the sizes of portions of the land shared among the children and how the land was shared is not known. He said that if the sharing was oral, they should call witnesses of those who were present and if it was documented, the document should be tendered. He maintained that it is not enough for the Claimant to plead the fact of "sharing" without giving cogent evidence on how it was shared among his grandfather's children from which he alleged that his late father got title to the land in dispute. He said that this is a serious gap not explained by the Claimant.

****Furthermore, counsel posited that the Claimant's witnesses, particularly CW1 - Joseph Ajiegbeokpa and CW2 - Igberease Ejianre, admitted

under cross-examination that Pa. Omokhodion deforested the land now in dispute.

However, he stated that the Claimant while testifying under cross-examination, disagreed with the CW1 and CW2 stating that it was not Pa. Omokhodion, 2nd Defendant's grandfather that founded or deforested Eko Omokhodion. He said that the Claimant and his witnesses cannot be blowing hot and cold at the same time.

He further submitted that apart from the fact that the Claimant's witnesses (in their evidence-in-chief) gave evidence outside the pleadings, their evidence including that of the Claimant is most unreliable and cannot sustain the reliefs as claimed by the Claimant and he urged the Court to dismiss the Claimant's claims.

He said that on their part, the Defendants, particularly the 2nd Defendant/Counter Claimant also relied on traditional history as his root of title to the land. He said that in their amended Joint Statement of Defence and Counter-Claim, the 2nd Defendant in paragraphs 3 to 10 pleaded copiously the history of how he became the owner of the land, part of which is now in dispute. He stated that his late grandfather, Pa Omokhodion was the original owner of the entire land measuring 15.594 hectares having deforested the land (known as Eko Omokhodion). That upon deforestation, his grandfather planted economic trees such as mango, orange, Kola nut, rubbers and others on the land while he also built a house on a portion of the land.

He narrated how upon the death of the 2nd Defendant's grandfather, many years ago, his late father, Mr. James Omokhodion inherited the said vast land and remained in undisturbed possession of the said land. That upon the death of Mr. James Omokhodion, his late father inherited the land and continued in undisturbed possession until sometime in 2005, when one Stephen Oghudu and some other persons trespassed on a part of the said vast land and he instituted Suit No. HCU/39/2006 against them.

He maintained that in their pleadings and evidence, the Defendants and their witnesses led evidence of traditional history of their root of title and of recent acts of possession over the vast land including the part in dispute. He said that the graves of both the grandfather and the 2nd Defendant's late father,

James Omokhodion are still on the land and that the Defendants and their family still harvest the economic crops till date.

He posited that apart from the evidence of the 1st and 2nd Defendants/Counter-Claimant, the evidence of DW2- Pa Odion Imoisih is cogent and direct and was unshaken nor contradicted in any way by the Claimant. See paragraphs 1 to 12 of his Statement on Oath of 27th May, 2022.

He submitted that the Claimant has not proved his claims before the Court and the Defendants/ Counter-Claimants have discharged the onus placed on them to prove, their title to the land now in dispute.

He therefore urged the Court to dismiss the Claimant's claims and grant the Defendant's Counter-Claims.

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

i. ***Whether the Claimant is the one entitled to be granted the statutory right of occupancy in respect of a piece of farm land verged green in the Litigation survey plan No. AJETS/ED 2010/D005 dated 2/11/2010.***
ii. ***Whether the claimant having proved his case is entitled to be awarded General damages for trespass and an order of perpetual injunction.***
iii. ***Whether the counter-claim of the 2nd defendant has been established.***

Thereafter, the learned counsel argued the three issues seriatim.

ISSUE ONE:

Whether the Claimant is the one entitled to be granted the statutory right of occupancy in respect of a piece of farm land verged green in the Litigation survey plan No. AJETS/ED 2010/D005 dated 2/11/2010.

Arguing this first issue, learned counsel submitted that the Claimant has established his case on the preponderance of evidence or balance of probabilities and should have judgment entered in his favour. He further submitted that the Claimant properly obtained title to the land in dispute. That from the evidence of the Claimant and his witnesses, it was established that the land in dispute forms part of the land that was deforested by the Claimant's

grandfather, late Pa. Oleabhiele Ufua more than 100 years ago. That he planted rubber trees, cocoa, kolanuts on the land and used same for farming purposes. He traced the traditional history of the land from the Claimant's grandfather down to the Claimant.

He submitted that the identity of the land was well established by the Claimant through the viva voce description of the land given by the Claimant and his witnesses and the litigation survey plan which was admitted as Exhibit "C''.

He said that the Claimant gave evidence that nobody has ever disputed the title of his grandfather and his late father to the portion now in dispute throughout their life time.

He submitted that Exhibit "D" (Judgment dated 26/7/16) is not relevant to these proceedings. That neither the Claimant nor his predecessor in title was a party to that Suit No: HCU/39/2006. He further submitted that the claim in Exhibit "D" is not in respect of this land in dispute and that the description of the Claimant's land in his evidence in this suit is quite different from the description of the land in Exhibit "D".

He submitted that the CW1 (Lawrence Oahimere) who testified on the 8/2/2017, gave evidence that he shared common boundary with the Claimant on the land in dispute, that they are boundary neighbors.

Furthermore, he posited that one Joseph Ajebeokpa testified that he is from Okhelen Community in Uromi, that Pa. Okhenlen gave Omonkhodion land in which he (Omonkhodion) made a camp near the Claimant's land and that Pa. Oleabhele Ufua was the first to deforest the land in dispute. He said that he further testified that the Claimant is the beneficial owner in peaceable possession of the land in dispute for several years and this piece of evidence was not contradicted or challenged by the Defendants.

Again, he submitted that under cross examination, CW2 (Igberease Ejianre) stated that he knew Pa. Omonkhodion, James Omonkhodion and that Pa. Omonkhodion's properties did not include the land in dispute and that the 2nd Defendant is not the 1st son of James Omonkhodion, that the name of the 1st son of James Omonkhodion is Palmer Omonkodion. He pointed out that Palmer

Omonkodion in his life time never challenged the Claimant's father or the Claimant over the land in dispute.

He posited that the CW2 gave evidence that the 1st Defendant told him that she was the one that brought thugs to cut down trees on the land in dispute. That under cross examination the 1st Defendant gave evidence that there were economic crops on the land in dispute and that the economic crops such as rubber trees, cocoa, pepper fruit, plantain were destroyed by fire and that sometime in the year 2010 she (1st Defendant) cut down the rubber trees on the land in dispute and planted tomatoes.

He submitted that the Claimant's crops on the land in dispute were actually destroyed by the 1st Defendant and that the 1st Defendant acknowledged this fact.

He said that under cross examination the 2nd Defendant gave evidence that between 1970 to 2008 there was no dispute over this said land and that the 2nd Defendant did not sue the Claimant in respect of Exhibit "D".

He submitted that the act of the 1st Defendant destroying the Claimant's crops on the land in dispute further corroborated the evidence of the Claimant that the 1st Defendant hired thugs who were armed with dangerous weapons to destroy the Claimant's crops on the land in dispute.He submitted that from the above evidence, the Claimant is the owner of the land in dispute.

Learned counsel cited the cases of ***Onovo v. NBA (2015) All FWLR (pt. 765) S.C. 298;*** and ***Omotosho v. Saka (2015) ALL FWLR pt 782 C.A. 1686*** and enumerated the five methods of proving title to land in Nigeria. He maintained that although proof of one of these five methods of establishing title to land will suffice to uphold any claim in that regard, the Claimant herein has successfully relied on four methods of proof.

He posited that in establishing his claim by means of traditional history, the Claimant, in his pleadings and the evidence adduced, established an unbroken line of devolution from the Claimant's grandfather down to the Claimant. He also relied on the case of ***Addah v. Ubandawaki (2015) ALL FWLR (pt. 775) page 200 at 212 paras. B-C.***

Furthermore, he posited that the Claimant pleadings and the evidence adduced in support sufficiently showed that the Claimant and his predecessors

in title had been exercising acts of ownership and possession over the land in dispute. He referred the Court to the cases of ***Abeje v. Apeke (2014) ALL FWLR (pt 715) pg.376 at 393 paras. D-E;*** and ***Lambe v. Aremu (2014) All FWLR (pt. 729) page 1075 at 1110-1111 paragraphs G-D.***

He submitted that from the evidence before the court it is clear that the Claimant inherited the land in dispute from his father, having performed the final burial rites and the Claimant's father was given the land in dispute by Pa. Olabhiele Ufua who deforested a vast land including the land in dispute more than 100 years ago and cultivated the land until he died.

He therefore submitted that the Claimant is the owner of the land in dispute and is entitled to be granted a statutory right of occupancy.

ISSUE TWO:

Whether the claimant having proved his case is entitled to be awarded General damages for trespass and an order of perpetual injunction.

He submitted that the Claimant has proved his case and is entitled to an award of general damages for trespass and an order of perpetual injunction.

Furthermore, he submitted that the Claimant has suffered damages due to the trespass committed by the Defendants. He said that the 1st Defendant under cross-examination gave evidence that she was the person that destroyed the Claimant's crops on the said land.

ISSUE THREE

Whether the counter-claim of the 2nd defendant has been established.

Counsel submitted that the 2nd Defendant has failed to establish his counter – claim over the land in dispute on a preponderance of evidence, so as to entitle him to a grant of the reliefs sought in his counter – claim in this suit.

He therefore urged the Court to grant the Claimant's claim with cost.

I have carefully examined the evidence in this suit together with the submissions of the learned counsel for the parties. Upon a careful examination of the issues formulated by learned counsel for the parties, I observed that the 2nd Defendant filed a Counter-Claim in this suit so I am of the view that the two issues for determination in this suit are as follows:

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

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

I will now proceed to resolve the two issues seriatim

ISSUE ONE:

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

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

It is now settled law that the five ways of proving ownership of land are as follows:

I. ***By traditional evidence;***

II. By the production of documents of title;

III. By proving acts of ownership;

IV. By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute; and

V. By acts of long possession and enjoyment of the land.

See: ***Idundun vs. Okumagba (1976) 9-10 S.C. 227***.

The point must be made that any one of the five means will be sufficient to prove title to the land as each is independent of the other. See: ***Nwosu vs. Udeaja (1990) 1 NWLR (Pt.125) 188; and Anabaronye & Ors. vs. Nwakaihe (1997) 1 NWLR (Pt.482) 374 at 385.***

In the instant suit, from the evidence led, the Claimant appears to be relying on the first, third, and the fifth means of proof. To wit: proof by traditional evidence; by acts of ownership; and by acts of long possession and enjoyment of the land.

It is settled law that traditional history is the first mode of proof of title to land. See the case of ***Idundun vs Okumagba (1976) 9 -10 SC 227***. In relying on traditional history to establish title to land, a party must plead and lead credible evidence on the root of his title i.e. how, he came to own the land, linking himself right down to the original owner, and show how the said original owner acquired the land. See ***Awodi & Anor vs Ajagbe (2014) LPELR 24219 (SC); Akinloye vs Eyiyola (1968) 2 NMLR 92; Owoade vs Omitola (1988) 2 NWLR (Pt.77) 413. See also Mogaji vs Cadbury Nig Ltd (1985) 2 NWLR (Pt.7) 393.***

On the traditional history of the land in dispute, the Claimant's evidence is that about one hundred years ago, the vast expanse of land including the one in dispute was deforested by his grandfather, the Late Pa. Oleabhiele Ufua who was among the early settlers at Ukoni, Uromi. After the deforestation, his grandfather allegedly planted some economic crops on the land.

He alleged that in his lifetime, his grandfather shared the land among his children namely: Afama Ejianre who was the Claimant's father and Odine. That after receiving his portion, the Claimant's father allegedly took possession, planted more economic trees on the land and built a hut on the farmland.

The Claimant alleged that the parcel of land now in dispute is the part that was given to his father by his grandfather. He maintained that his late father was in continuous and uninterrupted possession of the land until he died in 1970.

That upon the death of his late father in 1970, the Claimant as the eldest surviving son of his father allegedly performed his father's burial rites and inherited his late father's property in accordance with Esan Native Laws and Customs.

That upon inheriting the land, the Claimant allegedly took possession of the land including the crops, rubber trees, hut and started maintaining same and tapping the rubber trees without any disturbance until he left for Benin City in 1977.

He alleged that when he left for Benin City in 1977, other family members continued to tap the rubber trees and harvest other crops like cocoa and kolanuts on the land since 1977 without any disturbance from any person until sometime in March 2009 when the 1st Defendant encroached on a part of the land in dispute by transferring same to a third party.

Incidentally, the Defendants are also relying on evidence of traditional history to establish their title to the land in dispute. In their evidence, they traced the history of the land in dispute to one Pa Omokhodion, the 2nd Defendant's grandfather, who they alleged deforested the vast land situate and lying at Eko-Omokhodion, Ukoni, Uromi and was in undisturbed possession of same until he died many years ago.

They alleged that upon the death of Pa. Omokhodion, the 2nd Defendant's late father, Mr. James Omokhodion, inherited the said vast land and remained in undisturbed possession of the said land until he died. That the 2nd Defendant being the eldest son, inherited the said vast land including the land in dispute in accordance with Esan native law and custom and has been in an undisturbed possession without any let or hindrance.

The Defendants maintain that the Claimant's father did not deforest the land in dispute or any land but was a mere palm wine tapper. According to them, sometime in March, 2010 the Claimant and one Mr. Ekpoba trespassed into the land in dispute and attempted to share it but they were promptly reported to the palace at Uromi by the Omokhodion family. They narrated the steps taken to resolve the dispute before the matter came to Court.

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

In the course of the hearing, the Defendants made spirited attempts to discredit the evidence adduced by the Claimant. A major thrust of the Defendants defence was that the Claimant did not establish the identity of the land in dispute.

In an action seeking declaration of title to land, the issue of identity of the land in issue is very fundamental. Where the area of land in dispute is well

known to the parties, the question of proof of the identity of the land does not arise. No onus lies on a claimant for declaration of title to such land to prove the said identity as that fact is not an issue for determination between the parties in the suit. See ***Atanda vs. Ajani (1989) 3 NWLR (Pt. 111) 511- Kyari vs. Alkali (2001) 5 S.C. (Pt.II) 192.*** But where the identity of the land is in dispute, the onus is on the Claimant seeking the declaration to establish the precise identity of the land for which he seeks the declaration. See ***Gbadamosi vs. Dairo (2007) 1 S.C. (PT.II) 1; Odesanya v. Ewedemi (1962) 1 All NLR 320;*** and ***OKOLI V. OMAGU (2014) LPELR-22665(CA)(PP. 51 PARAS. B).***

In his written address, the Defendant's counsel submitted that the Claimant while testifying under cross examination admitted that he does not know the land in dispute. He tendered the record of proceedings Exhibit "B" to buttress the point. Curiously, I observed that the Claimant actually stated in Exhibit "B" that he does not know the land in dispute.

However, upon a review of the entire evidence adduced by both parties, I observed that in an attempt to ascertain the identity of the land in dispute, both parties filed their Litigation Survey Plans and tendered same at the hearing. The Claimant's Litigation Survey Plan is Exhibit "C", while that of the Defendants is Exhibit "F". It is settled law that the purpose of a survey plan is to establish with certainty the identity of the land in dispute. See the case of ***AJANAKU & ANOR V. OSUMA (2013) LPELR-20528(CA)(PP. 31 PARAS. B-B).***

It is settled law that where the identity of the disputed land is in issue and the two parties have filed survey plans and both plans are tendered by consent as in the instant case, the identity of the land can only be reached by a comparison of the survey plans.

In the instant case, the Claimant relied on Exhibit "C" in which his entire portion of land is verged green while the portion allegedly trespassed upon by the Defendants is verged red. On the other hand, in the Defendants' survey plan, Exhibit "F", the Defendants land is also verged green, while the portion allegedly trespassed upon by the Claimant is verged red.

Upon a careful comparison of the two survey plans, I observed that the portion of land which is verged green in the Claimant's survey plan (Exhibit "C"), which the Claimant is claiming, is bounded by survey beacon numbers EDA 2474; EDA 2475; EDA 2476; EDA 2477; EDA 2478; and EDA 2479

respectively. Also upon a careful examination of the area verged red in the Defendants' survey plan (Exhibit "F"), which the Defendants alleged that the Claimant trespassed upon is also bounded by the same survey beacon numbers EDA 2474; EDA 2475; EDA 2476; EDA 2477; EDA 2478; and EDA 2479 respectively.

Flowing from the foregoing, it is apparent that by their survey plans both parties have identified the same portion which is bounded by the aforementioned beacons as the portion of land in dispute. It is settled law that the purpose of a survey plan is to provide a clear description to make a disputed land ascertainable. See the case of ***BARUWA VS. OGUNSOLA (1938) 4 WACA 159***; ***JINWUL V. DIMLONG (2003) 9 NWLR (PT.824) 154; ONISILE V. APO (2013) LPELR-22330(CA) (PP. 36 PARAS. A-A).***

Thus from the totality of the evidence adduced, I am of the view that the parties know the land in dispute.

In a bid to discredit the Claimant's evidence of traditional history, the learned counsel directed the attention of the Court to some alleged contradictions in the case of the Claimant. Specifically, he pointed out that the Claimant's witnesses, particularly CW1 - Joseph Ajiegbeokpa and CW2 - Igberease Ejianre, admitted under cross-examination that Pa. Omokhodion deforested the land now in dispute.

However, he stated that the Claimant while testifying under cross-examination disagreed with the CW1 and CW2 stating that it was not Pa. Omokhodion, 2nd Defendant's grandfather that founded or deforested Eko Omokhodion.

Upon a careful examination of the evidence of the C.W. 1 and C.W. 2, I actually confirmed that they both admitted that it was Pa Omokhodion who originally deforested the vast area which includes the land in dispute. This is obviously at variance with the Claimant's evidence that the vast area was deforested by his grandfather, the Late Pa. Oleabhiele Ufua. Perhaps, this is why the Claimant promptly contradicted the evidence of the C.W. 1 and 2.

It is pertinent to note that the evidence of the person who deforested the land is very material in the proof by way of traditional evidence. See the cases of ***EZE &*** and ***ORS VS. ATASIE & ORS (2000) LPELR - 1190***

(SC); ANYAFULU & ORS VS. MEKA & ORS (2014) LPELR - 22336 (SC).

Thus any contradiction in relation to the person who deforested the land is bound to be very material. It is trite law that such contradictions destroy the credibility of the case of a party See- ***Edosa Vs Ogiemwanre (2019) 8 NWLR (Pt 1673) 1, Robert Vs Inspector General of Police (2021) 7 NWLR (Pt 1775) 268, Haruna Vs Abuja Investment and Property Development Co Ltd (2021) 15 NWLR (Pt 1798) 133.***

From the foregoing, it is apparent that the Claimant's attempt to prove his root of title by way of traditional evidence is bound to fail as a result of the material contradictions in his case.

Since the Claimant has failed to prove his title by evidence of traditional history of the land, I will consider the remaining means of proof to wit: by acts of ownership; and by acts of long possession and enjoyment of the land.

However, coming to these two means of proof, it is trite law that a claimant for declaration of title to land who has failed to prove his root of title or his grantor's root of title to the land cannot fall back on his long possession and exercise of acts of ownership to prove his title to the land. Without proof of his root of title or that of his grantor where it is put in issue, his long possession and exercise of acts of ownership in pursuance of the right of ownership become of no moment. As was held by the Supreme Court in the case of ***FASORO & ANOR v. BEYIOKU & ORS (1988) NWLR (Pt. 76) 263***

"one cannot really talk of acts of ownership without first establishing that ownership where a party's root of title is pleaded as, say - a grant, or a sale or conquest etc, that root has to be established first, and any consequential acts following therefrom can then properly qualify as acts of ownership. In other words acts of ownership are done because of, and in pursuance to the ownership. Ownership forms the quo warrantor of these acts as it gives legality to acts which would have otherwise been acts of trespass."

See also the cases of ***OWHONDA v. EKPECHI (2003) 9-10 SC 1 AND IBENYE & ORS v. AGWU & ANOR (1998) 9-10 SC 18;*** and ***NGADIUKWU V. MOGHALU & ORS (2014) LPELR-24366(CA) (PP. 51-52 PARAS. A-A).***

Thus from the foregoing, the Claimant has failed to prove his case on the preponderance of evidence to warrant the judgment of this Court in his favour. Issue 1 is therefore resolved against the Claimant.

ISSUE TWO:

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

In his Counter-Claim, the 2nd Defendant counter-claimed against the Claimant seeking reliefs for declaration, damages and perpetual injunction. It is settled law that a Counter-Claim is a separate, independent and distinct action from the main claim. The burden of proof is on the counter claimant to prove the counter claim by credible evidence just as in the main claim. See the case of ***DOZZY GROUP OF COMPANIES LTD V. OKEKE (2016) LPELR-41522(CA)(PP. 15 PARAS. C).***

In proof of his counter-claim, the 2nd Defendant/Counter Claimant also relied on traditional history as his root of title to the land. He traced the traditional history of the land from his late grandfather; Pa Omokhodion who was the original owner of the entire land measuring 15.594 hectares having deforested the land (known as Eko Omokhodion). That upon deforestation, his grandfather planted economic trees such as mango, orange, Kola nut, rubbers and others on the land while he also built a house on a portion of the land.

He narrated how upon the death of his grandfather, his late father, Mr. James Omokhodion inherited the said vast land and remained in undisturbed possession of the said land. That upon the death of his late father, he inherited the land and continued in undisturbed possession until sometime in 2005, when one Stephen Oghudu and some other persons trespassed on a part of the said vast land and he instituted Suit No. HCU/39/2006 against them. The 2nd Defendant's evidence of traditional history remained uncontradicted all through this case. It is quite credible and reliable. I believe the evidence of traditional history adduced by the 2nd Defendant in proof of his counter claim and I hold that the 2nd Defendant has proved his claims on the preponderance of evidence.

I will now consider the other reliefs which the 2nd Defendant is seeking in his Statement of Claim. He is seeking perpetual injunction and the sums of N5,000,000.00 as general for trespass.

At the hearing, the 2nd Defendant adduced evidence to prove that sometime in March, 2010 the Claimant and one Mr. Ekpoba trespassed into the land in dispute and attempted to share it but they were promptly reported to the palace at Uromi by the Omokhodion family.

On the relief of general damages for the Claimant's acts of trespass, it is settled law that general damages are damages which the law implies or presumes to have accrued from the wrong complained of or as the immediate, direct and proximate result or the necessary result of the wrong complained of.

A trial Court has the discretionary power to award general damages and when exercising such discretionary powers, it has the duty to calculate what sum of money will be reasonably awarded in the circumstance of the case. See ***TAYLOR V. OGHENEOVO (2012) 13 NWLR (pt. 1316) pg. 46 @ 66 paras F-H, GARBA v. KUR (2013) 13 NWLR (pt. 831) and BELLO v. AG. OYO STATE (1986) 5 NWLR (Pt. 45) 828***.

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

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

In the instant case, going through the entire gamut of the case, I am of the view that having regard to the circumstances of this case, the 2nd Defendant is entitled to some form of compensation as general damages.

On the claim for perpetual injunction, it is settled law that where damages are awarded for trespass, and there is an ancillary claim for injunction, the Court

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

In the event Issue Two is resolved in favour of the 2nd Defendant.

Having resolved the two issues in favour of the Defendants, I hold that the Claimant's Claims are dismissed while the 2nd Defendant's Counter-Claims are granted as follows:

1) ***A Declaration that the 2nd Defendant/Counter Claimant is entitled to a grant of statutory right of occupancy over the vast parcel of land covering an area of 15.594 hectares lying and situate at Eko-Omokhodion - Ukoni,Uromi,Uromi which land is more particularly marked and delineated and verged green in the Litigation Survey Plan No.ISO/ED/D29/2014 dated the 27th of May, 2014 filed along with the Joint Statement of Defence and Counter- Claim;***
2) ***The sum of N2, 000,000.00 (Two Million Naira) only being general damages against the Claimant; and***
3) ***An order of perpetual injunction restraining the Claimant by himself, his heirs, agents, assigns, servants and/or privies from further entering, trespassing, interfering with, committing any further acts of trespass and/or acting in any manner inconsistence with the rights and interest of the 2nd Defendant/Counter Claimant on the said land in dispute in this action.***

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

Hon. Justice P.A. Akhihiero

24/11/23

COUNSEL:

PROF. A.O.O.EKPU----------CLAIMANT

I.ILUEMINOSEN ESQ---------DEFENDANTS/COUNTER-CLAIMANTS