IN THE HIGH COURT OF JUSTICE

OF EDO STATE OF NIGERIA

IN THE UROMI JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,

ON THURSDAY THE
12TH DAY OF OCTOBER, 2023

BETWEEN ***SUIT NO: HCU/7/2014***

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

AND

1. BERNARD AMANFOH

2. AUGUSTINE AMANFOH ----------DEFENDANTS

3. FRIDAY ITIKUN

JUDGMENT

The Claimant's extant claim before this Court is his Amended Statement of Claim dated 29th day of September 2016 while the extant Statement of Defence of the Defendants is the Amended Joint Statement of Defence dated 12th November, 2018.

By his Amended Statement of Claim, the Claimant is seeking the following reliefs:

(a) A declaration that the Claimant is the owner and the person entitled to apply and be granted the statutory certificate of occupancy in respect of a piece or parcel of land lying situate on

the right hand side of Amendokhian Road, Idunmwun-Odion, Ukoni-Uromi measuring 7374.576 sq. metres which said land is very well known to the Defendants as the defendants trespassed unto a part of the land measuring 4836. 506 sq. metres in March, 2013.

(b) An Order of perpetual injunction restraining the defendants their agents, assigns, servants and privies from further trespass to the aforesaid part of the land measuring 4836.506 sq. metres covered by litigation survey No. SIE/ED/2016/D04 dated 19-07-16 and drawn by Surv. STANLEY EGOGO.

(c) <u>SPECIAL DAMAGES:</u>

(i) 20 mango trees at N5000 per tress N100,000 30 orange trees at N5000 per trees----------N150,000

(ii)10 per trees at N6, 500 per trees----------N65,00026

(iii)Cola nut trees at N7, 000 per tree ----------N182,000

(iv)52 Plantain Suckers at N3000 per sucker ----------N152,000

(vi)Destruction of his father's grave ----------N950,000

Total ----------N1,599,000

(d) <u>GENERAL DAMAGES:</u>

N10,000,000 as general damages for trespass.

Grand total ----------N11, 599,000

In proof of his case, the Claimant called four witnesses and testified for himself while the Defendants each testified for themselves and called two witnesses.

The Claimant's case as can be gleaned from his evidence is that he is the owner in possession of a parcel of land at Amendokhian Road, Idunmwun-Odion, Ukoni-Uromi measuring 7374.576 sq. metres.

According to the Claimant, his great grandfather, the late Pa. Ufua was the original owner of the land having deforested and acquired same in accordance with Esan Native Laws and Customs. He alleged that the said Pa.

Ufua who was among the early settlers at Ukoni, Uromi deforested the land and planted, rubber trees, cocoa, cola nuts, orange, mango and plantain on the land.

He stated that upon the death of Pa. Ufua, the land was passed unto his grandfather Pa. Olabhie who also continued farming on the land and resided on the land. The said Pa. Olabhie had nine children namely: Afama, Enjianre, Oiyamhonlan, Okodogbe, Inegbosun, Isomuan, Adesuwa, Irioremien and Omoduwa.

The Claimant alleged that in his lifetime, Pa. Olabhie shared the land amongst his children and the portion which the Defendants allegedly trespassed upon forms part of the entire land shared to the Claimant's father.

The Claimant alleged that his late father was in continuous and un-interrupted possession of the land and also built a house on the land where he lived until he died in 1970. That upon the death of his late father, he performed his father's burial ceremonies, inherited his late father's property, took possession of the land and the crops thereon and started maintaining them without any disturbance until he left for Benin City in 1977.

According to him, when he left for Benin City in 1977 his younger brother Igberaese Ejianre and some other family members like Sunday Odile and Patrick Ejianre continued to harvest the crops on the land and remit the proceeds of sales to him.

The Claimant alleged that in March 2013 the Defendants hired armed thugs, entered the land and cut down all the rubber trees, cola nut trees, cocoa trees, orange trees, plantain suckers and destroyed his late father's grave on the land.

In defence of this suit and in proof of their Counter-Claim, the Defendants testified for themselves and called one witness.

From the evidence adduced at the hearing, the Defendants case is that one Pa. Amanfoh, who was the 1st and 2nd Defendant's grandfather, was the original owner of the vast land measuring 6711.395 square meters situate at Idumu-Odafen, Ukoni, Uromi, his forefathers having deforested same earlier on.

They alleged that their grandfather gave to the Claimant's father, part of his land measuring 677.721 square meters.

They maintained that neither the Claimant's great grandfather nor his grandfather ever deforested, lived on, settled on, planted or acquired the said land in accordance with Esan Native Laws and Customs.

According to them, the land was inherited by the 1st and 2nd Defendants father upon the demise of their grandfather in accordance with Esan Native Laws and Customs, and subsequently, the land was inherited by the 1st Defendant after performing the burial rites of his father, Benedict Ehimen Amanfoh under Esan Customary Law.

They maintained that the 1st and 2nd Defendants forefathers deforested the land in dispute lived, farmed on it and their grandfather was in an undisturbed possession until his death. That the land belongs to the Amanfoh Family of Idumu-Odafen Quarters of Ukoni. They denied ever employing the services of thugs to cut down any tree on the land in dispute.

The 1st Defendant denied having any common boundary with the Claimant and stated that the land sold to the 3rd Defendant does not share boundary with any land belonging to the Claimant.

The Defendants alleged that the 1st and 2nd Defendants hail from Idumu-Odafen where the said land in dispute is located while the Claimant hails from Idumu Soke Quarters at Ukoni which is very far away from Idumu-Odafen.

The 3rd Defendants maintained that at the time he bought the said parcel of land, there were no economic trees or fruits crops on it.

The Defendants alleged that recently the High court of Justice, Fugar Division pronounced a judgment regarding the land now in dispute which was also captured as part of the Amanfoh family land. The judgment and the litigation survey plan were admitted as exhibits at the hearing.

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, the learned counsel for the Defendants ***Ojie Inegbeboh Esq.*** formulated a sole issue for determination as follows:

"*Whether from the evidence before this Honourable Court, the Defendants have not proved a better title to warrant this court to dismiss the claim of the Claimant and grant the Counter Claim of the Defendants.*"

Arguing the sole issue for determination, the learned counsel submitted that the Claimant has failed to prove his case before this Honourable Court to warrant the judgment of this Honourable Court in his favour.

Furthermore, he submitted that the Defendants have proved their counter claim and he urged the Court to enter judgment in favour of the Defendants.

He identified the five ways of proving ownership of land as enumerated in the case ***Idundun v. Okumagba (1976) 9-10 S.C. 227 at 246***. He also referred the Court to the cases of ***DIVINE IDEAS LTD. V. UMORU (2007) ALL FWLR (PT. 380) 1468 AT 1499 - 1500 PARAS. F - A (CA)***; ***Adewuyi v. Odukwe (2005) 7 SC (Pt. II) 1;*** and ***Ashiru v. Olukoya (2006) 11 NWLR (Pt. 990) 1.***

Learned counsel submitted that each of the five methods of proving title to land is independent of the other and that reliance on one of them is sufficient to prove title to land and he relied on the following cases: ***Ukpakara v. Egbevhue (1996) 40/41 LRCN 1481; Nwosu v. Udeala (1990) 1 NWLR (Pt. 125) 632 @ 656.***

He posited that in the instant case the Claimant relied heavily on traditional method to try to prove his title by claiming that his great grandfather Late Pa. Ufua was the original owner and in possession of this piece of land in dispute having deforested same as one of the early settlers in Ukoni, Uromi.

He posited that the Claimant stated that upon the death of his great grandfather, the land passed on to his grandfather. The Claimant also stated in his examination in chief that his grandfather Pa. Olabhie had nine children namely Afama, Ejianre, Oiyamhonlan, Okodogbe, Inegbosun, Isomuan, Adesuwa, Irioremien and Omoduwa. He said that his grandfather shared the land amongst his children and that the part shared to Ejianre Olabhie is the part now in dispute.

He maintained that the above piece of evidence cannot be believed because it implies that the land in dispute has boundaries with the land of the other eight children making it impossible for the title to fall under one of the methods of proving land which is *"**proof of possession of connected or adjacent land in circumstances tendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute"*** as stated in the case of ***DIVINE IDEAS LTD. V. UMORU (Supra).***

Counsel posited that the Claimant's case is that the land is located in Idumu-Odion, Ukoni, Uromi and under cross examination, the Claimant admitted that he is from Idi-Soke Quarters of Ukoni a far distance from the said land in dispute. He said that all the witnesses of the Claimant admitted that the Claimant is from Idi-Soke Quarters in Ukoni, Uromi. He said that the Surveyor (CW3) who produced the litigation survey plan Exhibit "A" put the location of the land as Idunmwu-Odion, Ukoni, Uromi. He said that the other witnesses CW1, CW2 and CW4 all admitted that the land is not located in Idi – Soke quarters, Ukoni but tried to situate it at the boundary between Idumu-Odafen and Idumu-Odion outside the Claimant's place of origin.

He said that the question begging for an answer at this stage is whether a man from Idi-Soke can go and deforest a land in another quarter a place already in existence and deforested by people living there. He submitted that the answer is in the negative and he urged the Court to so hold.

He referred the Court to the testimony of CW4 Mr. Patrick Ejianre a brother to the Claimant who admitted under cross examination that the different quarters in Ukoni, Uromi are as follows:

1. Idumu Odion
2. Idumu EKa
3. Idumu Odafen
4. Idumu Eran
5. Idumu Oso
6. Idi Soke
7. Idu Eson
8. Idu Esolon
9. Idu Ojeiwa

He said that the witness admitted that the quarters are all different and separate from each other. He submitted that the failure of the Claimant to specifically state where the land is located would lead to speculations and he referred to the case of ***U.T. B. (NIG.) V. OZOEMENA (2007) 3 NWLR (PT. 1022) 448 AT 487 PARA.C (SC)***.

He further submitted that the evidence of the CW 2 Mr. Igbearease Ejianre contradicts the testimony of the surveyor CW3 and exhibit A as CW2 who is a direct sibling of the Claimant admitted under cross examination that his father was buried inside the house he built.

He wondered how the CW3 in his survey plan indicated a grave of the Claimant's father outside the house which will now leave the court to wonder if a grave was actually destroyed or where exactly was the Claimant's father buried. He submitted that the Court cannot rely on such controversial evidence and relied on the case of ***FARAJOYE V. HASSAN (2007) ALL FWLR (PT. 368) 1070 AT 1094; PARAS. A - C & E (CA)***.

He therefore urged the Court to discountenance the evidence of the Claimant and his witnesses since they are not witnesses of truth.

CERTAINTY OF THE IDENTITY OF THE LAND IN DISPUTE

Counsel submitted that in land matters, it is the responsibility of the Claimant to prove with certainty the identity of the land in dispute and that in the instant case, the Claimant failed to prove the identity of the land as to its exact location.

He said that in trying to prove the identity of the land, the Claimant contradicted himself when he stated that he is from Idumu-Soke a different quarter from where the land is located. That Exhibit A, the Litigation Survey Plan tendered by the Claimant shows that the land is located in Idumu-Odion while the Defendant in proof of the location of the land tendered Exhibit 'B' and 'C' which shows that the land is located in Idumu-Odafen Quarters, Ukoni, Uromi. He also referred to Exhibit 'C' which is a litigation survey plan where the land in dispute was properly captured in Suit No. HCU/9/2006 in which he alleged that judgment was delivered in favour of the 1st and 2nd Defendant's family.

He posited that Exhibit 'C' was made as far back as 1985 regarding the said land in dispute and other adjourning land without foreseeing that this day would come. Furthermore, that since Exhibit C is well over twenty years, it is vital to the defence of long acts of possession by the Defendants. He said that the document gives life to Exhibit B produced by the same surveyor and he urged the court to so hold and referred to the case of ***ELABANJO V. AJIGBOTESHO & ANOR (2012) LPELR-7892(CA)***.

Counsel submitted that for ownership of land to be determined in this suit the Court must first determine the identity and location of the land. He maintained that the Claimant and his witnesses contradicted themselves extensively when the Claimant said during cross examination that the land he is claiming is eight plots of 100ft by 100ft taking it out of the range of 100ft by 300ft he had claimed in his original Statement of Claim and his Written Deposition dated 9th day of February, 2014 adopted before this Honourable Court. He submitted that 100ft by 300ft cannot metamorphose into eight plots of land measuring 100ft by 100ft. He also submitted that 100ft by 300ft cannot metamorphose into 4836.506 Square Metres.

Furthermore, he submitted that the evidence contained in Exhibit A cannot be relied upon by this Court as to the exact location of the land because the Claimant never followed the surveyor to show him the land which he surveyed. He therefore urged the Court to discountenance Exhibit A.

Counsel posited that by his Amended Writ of Summons and Statement of Claim, the Claimant tried to shift the goal post at the middle of the game and further contradicted his Depositions which he adopted before this Honourable Court. He urged the Court not to believe the testimony of the Claimant and his witnesses since they are very contradicting and referred the Court to the case of ***ASHAKA V. NWACHUKWU (2013) LPELR-20272(CA).***

Counsel submitted that the Defendants have been able to establish title in not less than three ways of the methods of proving ownership of land. That the Defendants in their evidence stated that the land was an inheritance from their forebears who had earlier on deforested a vast piece of land and they have been in possession of this vast piece of land wherein the land in dispute forms part as can be observed from Exhibits B and C.

Furthermore, that the Defendants have also established that they are the owners of the connecting land surrounding this land in dispute. He said that the Claimant even helped the Defendants to establish this fact by stating that the Defendants have the vast land behind this land in dispute as contained in the testimonies of the Claimant and his witnesses.

He submitted that the Defendants have been able to establish ownership by means of documents i.e. Exhibit D the Judgment of the High Court of Fugar which judgment was allegedly in favour of the Defendants.

Again, he submitted that the Defendants have also established acts of possession and ownership which include selling, leasing, renting out all or part of the land or farming on it over a sufficient length of time to warrant the inference of exclusive ownership of the land. On all these grounds he referred to the case of ***DIVINE IDEAS LTD. V. UMORU (2007) (Supra).***

In conclusion, he urged the Court to dismiss the Claim and enter Judgment for the Defendants/Counter-Claimants.

In his final written address, the learned counsel for the Claimant, ***A.M.Okoh Esq.*** formulated two issues for determination as follows:

1. ***Whether the Claimant has established on the preponderance of evidence or balance or probability his claim to entitle him to the reliefs sought before this Honourable Court.***
2. ***Whether the defendants have establish on the preponderance of evidence their counter-claim, to entitle them to the reliefs sought.***

Thereafter, the learned counsel argued the two issues seriatim.

ISSUE ONE:

Whether the Claimant has established on the preponderance of evidence or balance or probability his claim to entitle him to the reliefs sought before this Honourable Court.

Counsel submitted that in every civil action, the burden of proof falls squarely on the Claimant, as he who asserts must prove his case with evidence and he relied on ***section 138 of the evidence Act 2011*** and the cases of ***Alakpa Vs Ebtor (215) 3 NWLR (Pt. 1447) 549;*** and ***Odulaja Vs. Haddah (1973) 11SC 357.***

He posited that the Claimant's case will be considered first before that of the Defendant and he relied on the case of ***Aromire Vs. Awoyemi (1972) ALL NLR (reprint) 105.***

Learned counsel identified the five ways of proving title to land as enumerated in the case of ***Idundun Vs. Okumagba (1968) 9-10 sc 227.***

He posited that proof of one of the five ways is sufficient to sustain a claimant's claim and referred the Court to the cases of ***Ojoh Vs. Kamalu 24 SCOR 256 at 245 – 296;*** and ***Amufukwa Vs. Ogbukalu (1994) 17 LRCN 28.***

Counsel submitted that the Claimant has proved his ownership of the land by traditional evidence and by acts of long possession and enjoyment of the land.

He submitted that in the Claimant's amended statement of claim and the reply to joint statement of defence to counter claim the claimant, it is clear that the Claimant seeks to prove his title by traditional history and acts of long possession and enjoyment of the land. He said that the averments and the evidence in support of same from the Claimant and his witnesses have not been controverted or impugned through cross-examination or by way of better evidence from the Defendants.

He submitted that evidence not challenged nor denied are deemed admitted and he cited the case of ***Ijebu-Ode Local 'Government Area Vs. Adedeji Balogun (1991) 1 NWLR Pt. 247, 336.***

He submitted that a party who relies on proof of title to land on traditional history is expected to plead how he and his predecessors in title acquired the land. That they must also plead and prove the following:

1. ***Who founded the land***
2. ***How the land was founded***
3. ***Particulars of the intervening owners through whom he claims.*** He referred the Court to the case of ***Alli Vs. Alesinloye (2000) 77 LRCN 742 at 761.***

He submitted that Claimant discharged the onus on him from his pleadings and evidence of the claimant and his witnesses before his Honourable court. He referred the Court to paragraphs 4, 5, 6, 7, 8, 9, 10 and 11 of the amended statement of claim, Paragraphs 1 (b), (d), (e), (f) and 4 of the reply to joint statement of defence and defence to counter claim, the statement an Oath of the claimant paragraphs 3, 4, 5, 6, 7, 8, 9, 10 and 11 and the evidence of the Claimant's witnesses as contained in their various statement on Oaths and also the further statement on Oath of the Claimant and his witnesses.

He submitted that the above pieces of evidence were not specifically denied or controverted by the Defendants by way of cross examination. He said that the Defendants did not plead who founded the land, how the land was founded and particulars of the intervening ownership of the land. He submitted that failure to specifically plead and prove the above particulars amounts to an admission and offends ***Order 15 Rules 5 (1 and 7) of the High Court Civil Proceedings rules 2018.*** He also cited the case of ***Ijebu –Ode Local Government Area vs. Adedeji (Supra).***

Counsel further submitted that a party who relies on traditional evidence or history needs to plead the names of his ancestors to narrate a continuous claim of devolution and not allowing there to be any gap defying explanations or leading to a prima facie collapse of the traditional history. See the case of ***Owoade Vs. Omitola (1988) 2 NWLR (Pt. 77) 413.***

He submitted that Claimant has discharged this onus by tracing the ownership of the land from Pa. Ufua to Pa. Olabhie to Ejiare Olabhie down to the present Claimant over a period of about 200. He alleged that the Defendant could not lead any credible evidence or plead any facts of devolution from the defendant's father Pa. Amanfoh.

He submitted that the Claimant's averment and evidence in the reply to the Joint Statement of defence and defence to the counter claim in paragraph 1 (b) was not denied, controverted nor impugned by cross examination.

Counsel submitted that the issue of the identity of the land is not in dispute as the Claimant's surveyor aptly captured the land, measurement and features on the land in Exhibit A. He submitted that the Defendants could not contradict the surveyor as to the features on the land but they attempted to contradict the measurement of the land as captured in the survey plan from the witness. He submitted that oral evidence cannot amend, contradict or vary a written document, i.e. Exhibit A.

Furthermore, he submitted that the identity or size of the land was never in issue rather it was the Defendants' counsel who introduced the issue of identity of the land in his address which was never contained in their pleadings. He submitted that the Defendants admitted that the defendant's father built a house on the land which confirms the fact that the identity of the land was never in dispute and that the Claimant has always been on the land. He referred the Court to Exhibit C and the evidence of DW1 the Defendant's surveyor who

admitted under cross examination that by Exhibit C, the Claimant's building and the features like pear trees belonging to the Claimant were already on the land and same was not in dispute. He relied on Exhibit C tendered by the Defendant showing claimant's house on the land and crops. He also relied on the evidence of the 2nd Defendant who he said testified and under cross examination, admitted that the house or land of the Claimant has never been in dispute and that he does not know when his father gave the land to the Claimant's father because he was very small then.

Furthermore, he posited that the 1st Defendant also gave evidence in this line and said that he was 19 years old when his father gave the land to Claimant's father in 1969. He pointed out that a man who was 19 years old in 1969 is still a civil servant in 2022. He said that this clearly shows that the 1st Defendant was not 19 years in 1969. He submitted that the evidence of the 1st Defendant is false and same should not be believed by the court.

Finally on this issue, counsel submitted that Exhibit C has no relationship with the said judgment and that since the 1st Defendant told the court that the Claimant's father has been in possession of the land since 1969 and Exhibit D was initiated in 2006 whereas Exhibit C clearly stated that Claimant's land was not in dispute. He submitted that Exhibits C and D are in favor of the Claimant. He therefore urged the Court to resolve issue one in favour of the Claimant.

ISSUE TWO:

Whether the defendants have established on the preponderance of evidence their counter claim to entitle them to the reliefs sought.

Counsel submitted that the onus is on the Defendants to prove the counter claim and he relied on the case of ***Aromire vs. Awoyemi (Supra).***

He submitted that a counter claim is a separate and independent action from the main claim and its success or failure is not tied to the fate of the Claimant's claim. See ***Ogbonda V. Eke (1998) 10 NWLR (Pt. 568) 73; Unokan Ent. Ltd V. Omuvwie (2005) 1NWLR (Pt. 907) 293; General Oil Ltd V. FSB Int'l Bank Plc. (2005) 5 NWLR (Pt. 919) 579; USman V Garke (2003) 14 NWLR (Pt. 840) 261; referred to.] (Pp. 102-103, Paras. H-B).***

He posited that the Defendants in proof of their counter claim relied on traditional evidence and documents in proof of their title. He submitted that they failed to prove their title to the land by traditional evidence because there is no

paragraph in their pleading to show how their fore-fathers founded the land and became owners through whom he claims. See ***Alli Vs. Alesinleye (Supra).***

He submitted that there is no paragraph(s) in the Defendants counter claim on traditional evidence or history as to how the land devolved to the defendant/counter claimant and the names of the successive ancestors who founded the land and passed it to the next before it eventually devolved on the defendants/counter claimant. See ***Ogunleye V. Oni (1990) 2 NWLR Pt. 135,74 at 783.***

On proof by documents of title, he submitted that Exhibit B is in conflict with Exhibits C and D because Exhibit C clearly captured the land, house and pears of the Claimant which is said not to be in dispute and Exhibit C and D has no relationship to this suit because the parties in Exhibits C and D are different.

He submitted that with these contradictions in Exhibits B, C and D, the court cannot choose and pick rather the option open to the court is to discountenance Exhibits B, C and D and hold same as not in support of the Defendants case rather that same re-enforced the claimant's claim to the land in dispute.

He submitted that the averments in paragraphs 1 (b), (b), (d) and 4 of the amended reply to joint statement of defence and defence to counter claim and the evidence of Patrick Ejianre CW. 4 in paragraph 3, 4, 5 and 9 of the statement on Oath and the evidence of CW 1, 2 and 3 stands unchallenged and uncontroverted and he urged the court to believe the evidence of the said Claimant's witness CW 4. See ***Balolgun V. UBA (Supra).***

Again, he submitted that the Defendants have struggled to plead that the claimant is from Idi Soke quarters different from the quarter where the land is situate. He submitted that he who alleges must prove and that the onus is on the defendants to show that the Claimant is from Idi Soke and that Idisoke quarter is not a quarter in Odumu Odion.

He submitted that the Claimant has pleaded that he is from Idisoke which is a quarter in Odumu-Odion quarter and that Idumu-Odion has three quarters. He said that this piece of evidence was corroborated by the evidence of CW1, CW2, and CW4 and paragraph 1 (a) (b) (c), (d), (f) , 2, 3 and 4 of the amended reply to joint statement of defence and defence to counter claim and same was not impugned or challenged by way of cross examination.

Finally, he submitted that from the totality of evidence before the Court, relying on Exhibits A, C, and D it is clear that the Claimant was in exclusive possession of the land in dispute before the trespass that necessitated this action and the possession of the Claimant is to be protected by the order of this Honourable Court as the defendants failed to discharge the burden placed on them. See ***section 143 of the evidence Act 2011. See also Ajero V. Uforji (1999) 71 LRCN 2875 at 2896 Ajibulu Vs. Ajayi (2004) 11 NWLR (pt. 885) 458 at 481.***

He therefore urged the Court to grant all the reliefs of the Claimant and dismiss the counter claim.

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 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 Defendants/Counter-Claimants have proved their counter-claim against the Claimant on the preponderance of evidence to warrant the judgment of this Court in their 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 the vast expanse of land including the one in dispute was originally deforested by his great grandfather, the late Pa. Ufua who was the original owner of the land.

According to the Claimant, upon the death of Pa. Ufua, his grandfather Pa. Olabhie inherited the land and continued to farm on the land and resided on it. He said that in his lifetime, Pa. Olabhie shared the land amongst his children

and the portion which the Defendants allegedly trespassed upon forms part of the entire land shared to the Claimant's father.

He maintained that his late father was in continuous and un-interrupted possession of the land and also built a house on the land where he lived until he died in 1970. That upon the death of his late father, he performed his father's burial ceremonies, inherited his late father's property, took possession of the land and the crops thereon and started maintaining them without any disturbance until he left for Benin City in 1977.

According to him, while he resided in Benin, his younger brother and some other family members continued to farm on the land until sometime in March 2013 when the Defendants allegedly trespassed on the land.

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 their forefathers who they alleged deforested the land before it devolved on one Pa. Amanfoh who was the 1st and 2nd Defendant's grandfather.

According to the Defendants, sometime ago, their grandfather gave the Claimant's father, part of his land measuring 677.721 square meters. That upon the demise of the 1st and 2nd Defendants' grandfather, their father inherited the land in accordance with Esan Native Laws and Customs, and upon the demise of their father, the 1st Defendant inherited the land after performing the burial rites of his father under Esan Customary Law.

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 Defendant/Counter-Claimant in other to determine the issue of credibility.

It is settled law that to establish traditional evidence of title by conclusive evidence, the Claimant must plead and prove such facts as: -

(a) Who founded the land in dispute,

(b) How they founded the land, and

(c) The particulars of the intervening owners through whom they claim. See the cases of ***Nkado v. Obiano (1997) 1 NWLR (Pt. 482) 374 SC; Ohiaeri v.***

Akabeze (1992) 2 NWLR (Pt. 221) 1; Anyanwu v. Mbara (1992) 5 NWLR (Pt. 242) 386; Opoto & ors v. Anaun & ors (2015) LPELR-24734(CA) (Pp. 39-42 paras. C-C).

Thus where as in the instant case the parties are relying on traditional history as their root of title to land, the onus is on them to plead the names and history of their ancestors. They should lead evidence to prove same without leaving any missing links in their genealogical tree from their progenitors down to themselves. See ***AWODI v. AJAGBE (2015) 3 NWLR (Pt. 1447) 578***; and ***Alabelapa v. Ajisefini (2017) LPELR-43234(CA) (Pp. 39-40 paras. D)***

From the pleadings and evidence on record, the Claimant pleaded and led evidence to trace his root of title from his great grandfather, the late Pa. Ufua who was the original owner of the land to his grandfather, Pa. Olabhie, thereafter to the Claimant's father and finally to the Claimant.

However, on the part of the Defendants, they pleaded and led evidence to trace the root to their forefathers who allegedly deforested the land and thereafter to Pa. Amanfoh, the 1st and 2nd Defendant's grandfather. It is pertinent to note that the names or the identities of the alleged forefathers of Pa. Amanfoh were not pleaded and invariably, no evidence was led on this salient aspect of the Defendant's root of title. As earlier stated, a party relying on traditional history as his root of title must plead the names and history of his ancestors without leaving any missing links in the genealogical tree. See ***AWODI v. AJAGBE (2015) supra***; and ***Alabelapa v. Ajisefini (2017)supra.***

Juxtaposed with the evidence of the Defendants, the evidence of traditional history of the Claimant appears more consistent and credible than that of the Defendants. The Claimant led evidence of an unbroken chain of succession and inheritance of the land in dispute from the time of deforestation by his ancestor Pa Ufua to when he inherited the land from his late father.

From the foregoing, I am of the view that on the preponderance of evidence, the Claimant's evidence of the traditional history of the land is more credible and acceptable than that of the Defendants.

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.

It is settled law that where the land is known to both parties, there is no burden on the Claimant to prove the identity of the land in dispute. See the case of ***AKINTERINWA & ANOR VS. OLADUNJOYE (2000) LPELR-358 (SC) P. 34, PARAS. B-C,*** where his lordship, ***Karibi-Whyte, JSC*** reiterated the position of the law thus:

"It has always been accepted in our Courts in land cases that where the area of land in dispute is well known to the parties, the question of proof not being really in dispute does not arise. In such a situation, it cannot be contended that the area claimed, or can the land in dispute be described as uncertain - see, ETIKO VS. AROYEWUN (1959) 4 FSC 129; (1959) SCN LR 308; OSHO VS. APE (1998) 8 NWLR (PT. 562) 492."

In the instant case, from the evidence adduced by both parties, the land in dispute is well known to both parties; the 1st and 2nd Defendants even alleged that that their grandfather gave the Claimant's father, part of his land measuring 677.721 square meters. Their only grouse with the Claimant is that he has exceeded the portion of land allegedly given to his father. Thus, where as in the instant case, the area of the land in dispute is well known to the parties, the proof of the identity of the land does not arise, this is because the parties know the portion of the land in dispute. See ***ANAGBADO V. FARUK (2108) LPELR 44090 (SC).***

Furthermore, where as in the instant case, a Claimant claims ownership of a piece or parcel of land against his neighbor and describes the boundaries of the said land in a survey plan which is tendered and admitted in evidence, that survey plan clearly refer to the particular piece or parcel of land in dispute and it cannot be said that the identity and extent of the said land is unknown. All that the Claimant needs to establish thereafter is his title to the said disputed land by one of the five ways/methods of proving ownership or declaration of title to land and to also testify as to the features etc on the land in issue. See ***Ayuya & Ors v. Yonrin & Ors (2011) LPELR-686(SC)(Pp. 35-37 paras. E).***

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

Furthermore, at the trial the Defendants seriously contended that since the Claimant hails from Idi-Soke quarters, his forebears could not have deforested the land which they claim is in Idumu-Odafen quarters.

Upon a careful consideration of the evidence of the Claimant and his witnesses, I observed that they consistently maintained that the Claimant hails from Idi-Soke quarters which they assert is a sub-quarters within Idumodion quarters where they allege the land in dispute is situate. On the other hand, the Defendants allege that the land is situate in Idumu-Odafen which is their own quarters. On the preponderance of evidence, I hold that the land in dispute is situate in Idumodion and not in Idumu-odafen as alleged by the Defendants.

In defending this suit, the Defendants tendered a judgment in Suit No. HCU/9/2006 and some documents relating to that suit to prove that the Court has given judgment to the Defendants in a sister suit involving the land in dispute. In effect, the Defendants raised the defence of issue estoppel.

It is settled law that issue estoppels will only arise in a subsequent suit when the issue had been raised and distinctly determined in a previous suit between the parties. See ***Fatai v. Gbadamosi (2015) LPELR-41724(CA) (Pp. 16 paras. B).***

Thus, issue estoppel can only arise where an issue had earlier on been adjudicated upon by a Court of competent jurisdiction and the same issue comes up again in any subsequent proceedings between the same parties. See ***Bamgbegbin v. Oriare (2009) 13 NWLR (Pt, 158) P. 370; Makun v. Federal University of Technology, Minna (2011) 18 NWLR (Pt. 1278) P. 190 and Nikagbatse v, Opuye (2010) 14 NWLR (Pt. 1213) P.50***.

Thus, to determine whether an issue in question constitutes issue estoppel, a Court would look at the issues that call for determination in the case and the issue that was resolved in the previous decision. The burden is on the party relying on issue estoppel to prove that the parties and issues raised and determined in the previous decision were the same as those in the present suit. See ***Oshoboja v. Amida (2009) 18 NWLR (Pt. 1172) P. 188 and Ikeni v. Efamo (1996) 5 NWLR (Pt. 445) P. 64; Oyo State Paper Mills Ltd & Ors v. Nibel Co. (Nig) Ltd (2016) LPELR-41430(CA) (Pp. 29-31 paras. F).*** From the available evidence, the Defendants have failed to prove that the parties, and the issues raised and determined in the previous decision are the same as those in the present suit. Therefore, the defence of issue estoppel cannot avail the Defendants in this suit.

Sequel to the foregoing, I hold that the Claimant has established his title to the land in dispute by the first means of proof, to wit: by evidence of the

traditional history of the land. As earlier stated in this judgment, proof of one of the means of proof will suffice. Therefore, I will not go further to consider the other means of proof available to the Claimant.

Thus on the preponderance of evidence, the Claimant is entitled to the declaration which he seeks in his first relief.

I will now consider the other reliefs which the Claimant is seeking in his Statement of Claim. He is seeking perpetual injunction and the sums of N1,599,000 and N10,000,000 as special and general damages respectively for trespass.

At the hearing, the Claimant adduced evidence to prove that sometime in March 2013 the Defendants hired armed thugs, entered the land in dispute and cut down all the rubber trees, cola nut trees, cocoa trees, orange trees, plantain suckers and destroyed his late father's grave on the land. I believe the evidence of the Claimant and I hold that the acts of the Defendants amount to trespass.

The Claimant is seeking the sum of N1,599, 000 (One Million, Five Hundred and Ninety Nine Thousand Naira) only being special damages for acts of trespass by the Defendants.

It is settled law that the burden to specifically plead and strictly prove special damages is on a party who claims it, although the tendering of documentary evidence in the form of receipts in proof of special damages could be a good mode of discharging the burden on the claimant, it is however not an indispensable or exclusive means of poof of special damages, see ***PRODUCE MARKETING BOARO V. A.O. ADEWUNMI (1972) 11 SC 111/24***, where it was held: ***"The pleadings and evidence in the claim for special damages must be such that*** they ***are of such character and quality for assessment and quantification."***

At the hearing, the Claimant pleaded and led evidence to itemize his losses arising from the Defendants' acts of trespass. In their defence, although the Defendants denied the alleged losses, they did not lead any evidence to dispute the Claimant's assessment of the losses. Thus, in the absence of any contrary evidence from the Defendants, I hold that the Claimant has proved his claim for special damages.

On the relief of general damages for the Defendants' acts of trespass, it is settled law that general damages are damages which the law implies or

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

Thus, in awarding general damages, the Court would simply be guided by the opinion and judgment of a reasonable man. General damages are loses which flow naturally from the defendants act. See ***IJEBU-ODE LOCAL GOVT. V. ADEDEJI BALOGUN & CO. LTD. (1991) 1 NWLR (Pt. 165) 136***.

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

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

The fundamental objective for the award of general damages is to compensate the Claimant for the harm and injury caused by the Defendant. See: ***Chevron (Nig.) Ltd. vs. Omoregha (2015) 16 NWLR (Pt.1485) 336 at 340.***

Thus, it is the duty of the Court to assess General Damages; taking into consideration the surrounding circumstances and the conduct of the parties. See: ***Olatunde Laja vs. Alhaji Isiba & Anor. (1979)7 CA.***

The quantum of damages will depend on the evidence of what the Defendant has suffered from the acts of the Claimant.

In the instant case, going through the entire gamut of the case, I am of the view that having awarded special damages for the particular losses suffered; the Claimant is also 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 One is resolved in favour of the Claimant.

ISSUE TWO:

Whether the Defendants/Counter-Claimants have proved their counter-claim against the Claimant on the preponderance of evidence to warrant the judgment of this Court in their favour?

In his Counter-Claim, the Defendants counter-claimed against the Claimant seeking reliefs for declaration, damages and perpetual injunction. I am of the view that since I have made a finding under issue one that the Claimant's evidence of traditional history of the land is more credible and acceptable, the Defendants/Counter-Claim is bound to fail.

Issue two is therefore resolved in favour of the Claimants.

Having resolved the two issues in favour of the Claimant, I hold that the Claimant's Claims succeed while the Defendants' Counter-Claims are dismissed.

Sequel to the foregoing, judgment is entered in favour of the Claimant as follows:

(a) A declaration that the Claimant is the owner and the person entitled to apply and be granted the statutory certificate of occupancy in respect of a piece or parcel of land lying situate on the right hand side of Amendokhian Road, Idunmwun-Odion, Ukoni-Uromi measuring 7374.576 sq. metres which said land is very well known to the Defendants as the Defendants trespassed unto a part of the land measuring 4836. 506 sq. metres in March, 2013;

(b) An Order of perpetual injunction restraining the Defendants their agents, assigns, servants and privies from further trespass to the

aforesaid part of the land measuring 4836.506 sq. metres covered by litigation survey No. SIE/ED/2016/D04 dated 19-07-16 and drawn by Surv. STANLEY EGOGO.

(c) Special Damages in the sum of N1,599,000.00 (One Million, Five Hundred and Ninety-Nine Thousand Naira); and

(d) General Damages in the sum of N1, 000,000.00 (One Million Naira).

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

Hon. Justice P.A. Akhihiero

12/10/23

<u>COUNSEL:</u>

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Ojie Inegbeboh Esq----------DEFENDANTS/COUNTER-CLAIMANTS