

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO
ON WEDNESDAY
THE 18TH DAY OF JUNE, 2025.

BETWEEN:

SUIT NO: B/448/2021

MR. CHRIS OSAGIE & 51 ORSCLAIMANTS

AND

1. THE COMMISSIONER,

MINISTRY OF LANDS & SURVEYS EDO STATE

2. THE ATTORNEY GENERAL OF EDO STATE

3. ABBAS IMASUEN

**(For himself and other members of
Late John Odigie Imasuen's Family)**

DEFENDANTS

JUDGMENT

In this suit, by their extant Statement of Claim, the Claimants' are claiming against the Defendants as follows:

- (i) ***A DECLARATION that all that parcels of land presently occupied by the Claimants and other developers at Block D, Evhoriaria Government Layout, off Sapele Road, Benin City, Edo State forms***

part of the larger tract of land originally acquired by the then Bendel State of Nigeria Government (now Edo State Government) on 25th day of August 1976 as published in the Bendel State of Nigeria Gazette dated 9th September, 1976;

- (ii) A DECLARATION that the Edo State Government having by her letter dated 6th November, 1991 released the said parcels of land to the Claimants occupants and their successors in possession, the Claimants are now statutory tenants or allottees of the Edo State Government over the said land occupied by them;*
- (iii) AN ORDER of perpetual injunction restraining the 3rd Defendant, his agents, servants, workers or privies howsoever from further disturbing, harassing or interfering with the peaceful possession of the Claimants and other occupants over the land;*
- (iv) AN ORDER directing the 3rd Defendant to pay to the Claimants the sum of N20,000,000.00 (Twenty Million Naira Only) being damages for the various acts of trespass, harassments, demolition threats and disturbances carried out against the Claimants by the 3rd Defendant, his agents, servants, and privies.*

Upon receipt of the originating processes in this suit, the 1st and 2nd Defendants filed their Joint Statement of Defence which they subsequently amended.

The 3rd Defendant's extant Statement of Defence is his 2nd Amended Statement of Defence/Counter Claim dated and filed on the 26th of January 2024.

In his 2nd Amended Statement of Defence/Counter Claim, the 3rd Defendant counter-claimed against the Claimant and the 1st and 2nd Defendants as follows:

- (a) A declaration that the 3rd Defendant is the beneficial owner and the person entitled to a statutory right of occupancy over all that parcel of land measuring 400 feet by 1000 feet particularly delineated in the litigation Survey Plan No: ISO/ED/1221/92 drawn by F.U Iyawe, situate at Evboriaria, Oredo Local Government Area of Edo State of Nigeria;*
- (b) An order of possession in favour of the 3rd Defendant over all that piece or parcel of land now in dispute measuring 400ft by 1000ft and particularly delineated in the Survey Plan: ISO/ED/1221/92 lying and situate at Evboriaria, Oredo Local Government Area of Edo State of Nigeria;*

- (c) An order of perpetual injunction restraining all the Claimants, their servants, privies, agents, assigns or any person however called from further trespassing on the 3rd Defendant's late father's land measuring 400ft by 1000ft particularly marked and delineated in a Litigation Survey Plan No ISO/ED/1221/92 lying and situate at Evboriaria, Oredo Local Government Area Benin City, Edo State; and*
- (d) An order for general damages in the sum of N10, 000,000.00 (Ten Million Naira) only against the Claimants and in favour of the 3rd Defendant for trespass into the 3rd Defendant's late father's land.*

IN THE ALTERNATIVE, THE 3RD DEFENDANT CLAIMED AS FOLLOWS:

- (e) A declaration that the 3rd defendant is entitled to a compensation in respect to all that parcel of land measuring 400ft by 1000ft now acquired by the 1st and 2nd Defendants in this suit; and*
- (f) An order directing the 1st and 2nd defendants in this suit to pay the sum of Five Hundred Million Naira (N500,000,000.00) only to the 3rd defendant as compensation for his large expanse of land measuring 400ft by 1000ft acquired by the Edo State Government.*

At the hearing, the Claimants called two witnesses including the 41st Claimant and tendered several documents.

The Claimants' case as can be gleaned from the evidence which they led at the trial is that they all reside in their various buildings erected many years ago on various portions of the land comprised in Block D at Evhoriaria Government Layout, off Sapele Road, Benin City.

They alleged that they are prosecuting this suit on behalf of themselves and other occupants of the said Block D, Evhoriaria Government Layout, Sapele Road Benin City.

The Claimants alleged that they acquired their respective portions of land many years ago from different vendors without knowledge of the fact that the entire area including the Block D of the Evhoriaria Government Layout had been acquired by the then Bendel State Government since 25th August 1976 as published in the Bendel State Government of Nigeria Gazette dated 9/9/1976. The said Gazette was tendered by them and admitted as Exhibit "B" at the hearing.

They further alleged that when they and their predecessors in title discovered their error, they approached the Edo State Government through the office of the 1st

Defendant and after series of correspondence, visits and negotiations, the government agreed to absorb the Claimants and other occupiers of the land as her statutory tenants and or allottees and release the Block D of the said layout to them.

They alleged that eventually the government released the aforesaid portion vide a letter of Release issued by the Edo State Government through the office of the 1st Defendant dated 6/11/91 which was admitted in evidence as Exhibits “D” and “D1”.

According to the Claimants, after the release, they have individually been taking steps to regularise their holdings with the 1st Defendant's Ministry.

The Claimants maintain that they have nothing to do with the 3rd Defendant over any of the portions of land occupied by them since all individual rights (if any) over the land have been extinguished by the acquisition of the then Bendel State Government in 1976.

They alleged that the 3rd Defendant is not one of the occupiers of any portion of Block D of the Evhoriaria Layout and neither he nor his predecessor in interest has any portion of any land there and that he and his privies are not members of the Evhoriaria Community.

They said that despite these explanations, the 3rd Defendant and his agents and privies have continued to harass them over their respective portions of land threatening to demolish their buildings built many years ago.

They alleged that recently the 3rd Defendant and or his agents and privies pasted an undated and unsigned Notice on the walls of the Claimants given them 7 days’ notice to vacate their buildings. The said notice was admitted in evidence as Exhibit “C2”. They said that they also pasted a *Certificate of Execution* dated 5th April 2019 and *Application for Armed Policemen* dated 18th March 2019. The two documents were admitted in evidence as Exhibits “C3” and “C1” respectively.

The Claimants stated that the alleged order of execution was in respect of a default judgment in *SUIT NO. B/122/92: JOHN O. IMASUEN V. NOSAKHAREOSAKWE & ORS.* A certified true copy of the said Enrolment of Judgment was admitted as Exhibit “H”.

They alleged that they were neither parties nor privies to the aforesaid suit and that the Edo State Government who released Block D of the Layout to the Claimants was also not a party to the suit. They said that the four Defendants in the said Suit No: B/122/92 were sued alone in their personal capacities over the portions occupied by them. They said that the four Defendants have appealed against the judgment to the Court of Appeal and their appeal is pending.

The Claimants alleged that the 3rd Defendant and his agents are violently disturbing and harassing them and threatening to bring bulldozer to demolish their buildings after the expiration of the 7 days' notice.

Hence they have instituted this suit to seek redress.

In their defence, the 1st and 2nd Defendants called one Mrs. Lydia Igbinigie, a staff of the Edo Geographic Information Service as the D.W. 1 and closed their case.

The case of the 1st and 2nd Defendants is that in 1976, the then Bendel State Government acquired a large parcel of land measuring approximately 355.0 hectares (877.2 acres), along the Benin – Warri Road, at Evboriaria, Ekae and Okabere Village Areas, Benin City for overriding public interest.

They alleged that some members of the Evboriaria Community approached the Government of Edo State to de-acquire a part of the Evboriaria land acquired by the Government in 1976 and release same back to the Evboriaria Community.

According to them, based on the plea of some members of the Evboriaria Community, the Government of Edo State in the letter of release dated 6th November, 1991 which was admitted as Exhibit “D1”, released a part of the land measuring 47.4 hectares back to the Evboriaria Community in 1991.

The 1st and 2nd Defendants alleged that the plots of land the Claimants and the 3rd Defendant are claiming in this suit are inside the plots of land the Edo State Government acquired in 1976 as shown in the Composite Plan which they tendered and was admitted as Exhibit “E” at the hearing.

The 1st and 2nd Defendants alleged that the area verged blue in the composite plan is the area the Claimants and the 3rd Defendant are laying claims to, while the area verged black is the area, the Bendel State Government released back to the Evboriaria Community in 1991, while the area verged red is the entire plot of land, acquired by the defunct Bendel State Government in 1976.

In defence of this suit, the 3rd Defendant called one Erhabor Efosa James as D.W. 2, tendered some documents and closed his case.

According to the 3rd Defendant, the land in dispute belonged to their late father, Mr. John Odigie Imasuen and never at any time belonged to the Claimants nor their predecessors in title.

He maintained that the Claimants' predecessors in title were neither the owners nor did they have title over the land in dispute.

According to him, sometime in 1973 the said John Odigie Imasuen approached the land Allotment Committee of Evboriaria to get allocation for Building Plot and his application for a building plot measuring 400 feet by 1000 feet was granted by the then Oba of Benin, Oba Akenzua II. His witness tendered the said approval which was admitted as Exhibit “F”.

He alleged that upon the approval , the late Mr. John Odigie Imasuen took over possession of the said land by buying the rubber trees on the land from the then owner one Mr. Godwin Oghayafedo who issued him a receipt. He said that he subsequently uprooted the rubber trees from the land and surveyed same. The survey plan was admitted as Exhibit “G”.

According to him, in 1976, the then Bendel State Government compulsorily acquired a large expanse of land from the Evboriaria Community, including this land in dispute but in 1991, the Edo State Government released a portion of the large parcel of land compulsorily acquired in 1976 to Evboriaria Community.

He alleged that sometime in 1992, the 3rd Defendant’s father discovered that some of the Claimants predecessors in title had trespassed into his land now in dispute and he filed a legal action against them in Suit No. B/122/92.

He tendered the Litigation Survey Plan in respect of the aforesaid suit which was admitted as Exhibits “K”.

He said that the Court delivered judgment in favour of his father, in the suit and the judgment has been executed against the Claimants in this suit since 2019.

He maintained that based on that judgment, the 3rd Defendant’s father was granted possession of all that parcel of land measuring 400 feet by 1000 feet lying, being and situate at Evboriaria Community, Ward 37B has been delivered to the 3rd Defendant’s father. The Certified True Copy of the judgment was admitted in evidence as Exhibit “H” and a Certified True Copy of the Warrant of Execution was admitted as Exhibit “I”. The certificate of execution was also admitted as Exhibit “J”.

Upon the conclusion of evidence all the counsel filed their final written addresses which they adopted as their final arguments in support of their respective cases.

In her final address, the learned counsel for the 3rd Defendants, ***Mrs. Q.F. Akharekhandia*** formulated 3 issues for determination as follows:

- 1) Whether from the evidence adduced in line with the pleadings before this Court, the 3rd Defendant/Counter-Claimant has not discharged the burden on him to show or prove a better title than the Claimants to the land now in***

dispute as required by law to be entitled to a declaration as the beneficial owner and a grant of statutory right of Occupancy over the land measuring 400 feet by 1000 feet;

- 2) Whether the 3rd Defendant/ Counter-Claimant has not proved his claim in trespass to be entitled to his reliefs for possession, damages and perpetual injunction against the Claimants over their various acts of trespass within the 3rd Defendants' land measuring 400 feet by 1000 feet in dimension; and*
- 3) Whether the Limitation law of the defunct Bendel State now applicable to Edo State applies to the 3rd Defendant/Counter-Claimant's claims against the 1st and 2nd Defendant in respect of his parcels of land measuring 400feet by 1000 feet acquired by the then Bendel State now Edo State.*

Thereafter, the learned counsel argued the three issues seriatim.

ISSUE 1

Arguing issue one, the learned counsel submitted that the Claimants have failed to prove their title to the land in dispute on the preponderance of evidence as required by law.

She referred to the decision of the Supreme Court in the case of **IDUNDUN v. OKUMAGBA (1976) 9-10 S.C.227**, where they laid down the five methods to establish title to land in Nigeria. She submitted that a party seeking declaratory reliefs must succeed on the strength of his own case and that declaratory reliefs are not granted as a matter of course. She referred the Court to the cases of **SANI v. BANDI (2023) 44 WRN. pg 149 (Pp.171 –172) lines 45** and **ANUKAM v ANUKAM (2008) 159 LRCN 33 Pp 37 ratio 4**.

She submitted that the Claimants have failed to prove the title by which they became the occupiers of the land in dispute.

She referred copiously to the evidence of the Claimants' witnesses and submitted that the Claimants did not plead and prove how they acquired the land in dispute from the Idahosa family. She submitted that the Claimants did not lead any evidence to prove any land transaction between them and the Idahosa family.

She submitted that the Court cannot embark on assessment and awards without evidence supporting such exercise and relied on the case of **MENAKAYA v. MENAKAYA (2001) 91 LRCN 2958, p. 2961 ratio 6; Pp 2976j & 2977A**.

Learned counsel submitted that in the circumstance, the evidence of the Claimants amount to hearsay evidence and is therefore inadmissible in law.

She posited that the evidence before this Court is that the 3rd Defendant's father originally acquired the land which is now in dispute by an Application for building plot (Exhibit F) dated 15th November, 1973 made through the plot allotment committee, Evboriaria and same was graciously granted by His Royal Highness, Oba Akenzua II before the Bendel State Government compulsorily acquired the land in 1976 without compensation till date. She referred the Court to Exhibits "B" and "F".

Counsel posited that evidence of the CW2 under cross examination that the land in dispute was released to all the Claimants and that they were told to regularize their title is at variance with the contents of Exhibits "D" and "D" (Letter of Release) dated 6th November, 1991, tendered by the CW2 and DW1 respectively.

She maintained that the letter did not release the land in dispute to either the Claimants or their predecessors in title. She said that the 3rd Defendant's father's land in dispute which is presently occupied by the Claimants have not been released by the Government as shown in the composite plan (Exhibit E) and the EDOGIS survey plan (Exhibit A).

She contended that the Claimants cannot be made statutory tenants or allottees of the Government over the land in dispute owned by the 3rd Defendant's father by virtue of Exhibits F and H and is still under Government acquisition.

She maintained that there is no documentary evidence to substantiate the Claimants claims that the Edo State Government has released the acquired lands to the Claimants.

She contended that the Claimants and their predecessors in title were parties to the former suit- **SUIT NO: B/ 122/ 92: JOHN O. IMASUEN v. NOSAKHARE OSAKWE & ORS** and that the issues in contention in the suit are the same in this present suit and he referred the Court to Exhibit "H", the judgment of the court in the previous suit.

She maintained that the failure of the Claimants to prove their root of title with certainty renders their evidence worthless in law and she relied on the cases of **KUKOYI v. AINA (1999) 10 NWLR (pt. 624) pg 633 at 636 ratio 7** and **FAGUNA v. ADIBI (2004) 120, LRCN pg. 4548 Pp.4570**.

Counsel submitted that the 3rd Defendant has proved his late father's root of title (Exhibit F) sufficiently on the balance of probabilities and has established numerous acts of possession that his father has exercised on the land now in dispute. He referred copiously to the evidence of the D.W. 2 at the hearing.

He relied on his late father's root of title which is his Oba's approval which was admitted as Exhibit "F". He submitted that it is settled law that under Benin Customary law, the Oba's approval is the effective root of title and he relied on the cases of *OMOREGIE v. IDUGIEMWANYE* (1985) 2 NWLR (pt. 5) 41; *FINIH v. IMADE* (1992) 7 LRCN 117; & *AIGBE v. EDOKPOLOR* (1977) 2 S.C. 1 at page 8.

Counsel posited that by virtue of *section 132 (1) of the Evidence Act*, oral evidence is not admissible to vary, contradict, alter or add to written document and she cited the case of *LUBO v LUBO* (2023) 40 W.R.N. pg 133, Pp 135 ratio 1.

Furthermore, she submitted documentary evidence is the hanger for oral evidence. She maintained that the documents, tendered by DW2, to wit: Exhibits F, G, H, I, J and K speaks for themselves and they were not contradicted.

Counsel submitted that where two persons claim to be in possession of a parcel of land in dispute, the law ascribes possession to the one with better title to the land and she relied on the case of: *MOGAJI & ORS v. ODOFIN & ORS* (1978) 4 S.C.91 at 96; and *AJANI & ANOR v. LADEPO & 2 ORS* (1986) 3 NWLR pg 28, 276 at 283. She submitted that the 3rd Defendant/Counter Claimant has proved a better title to this land in dispute and she urged the Court to so hold.

She urged the Court to resolve this first issue in favour of the 3rd Defendant.

ISSUE 2

Whether the 3rd Defendant/ Counter-Claimant has not proved his claim in trespass to be entitled to his reliefs for possession, damages and perpetual injunction against the Claimants over their various acts of trespass within the 3rd Defendants land measuring 400 feet by 1000 feet in dimension.

Counsel submitted that the 3rd Defendant/Counter Claimant has made out his claim in trespass to be entitled to his relief for possession, perpetual injunction and damages against the Claimants.

She submitted that the 3rd Defendant/Counter Claimant has established that he has the right to exclusive possession of the land and is thus entitled to the reliefs for possession, injunction and damages. See the cases of *OGUNLOYE v. OBI* (1990) 2 NWLR (pt. 133) 745; and *OMOTAYO v. C.S.A.* (2010) 16 NWLR (pt. 1218) 1.

She rehashed the evidence of the D.W.2 in proof of the 3rd Defendant's title.

Furthermore, she submitted that trespass is an infraction against possession and the law confers possession to the owner of the land against the whole world. She cited the following cases: **ABOYEJI v. MOMOH (1994) 4 NWLR (Pt. 341) 646; OMORHIRHI v. ENATEVWERE (1988) 1 NWLR (Pt. 73) 746; and GODSPOWER ORLU v. CHIEF GODWIN ONYEKA (2018) 3 NWLR (Pt. 1607) 467.**

ISSUE 3

Whether the Limitation law of the defunct Bendel State now applicable to Edo State applies to the 3rd Defendant/Counter-Claimant's claims against the 1st and 2nd Defendant in respect of his parcels of land measuring 400feet by 1000 feet acquired by the then Bendel State now Edo State.

Learned counsel submitted that the Statute of limitation does not apply to lands held under customary tenure. She emphasised that the land in dispute was granted to the 3rd Defendant's late father by the then Oba of Benin vide Exhibit "F" which is the Oba's approval. She relied on the provisions of **section 6 (2) of the Limitation Law of the defunct Bendel State 1976 as applicable in Edo State** which stipulated thus:

"Nothing in this law affects action in respect of the title to land or interest in the land held by customary tenure".

She submitted that acquisition of title by prescription is completely unknown to land held under customary tenure and she cited the case of **ODEKILEKUN v. HASSAN (1997) 12 NWLR (pt. 531) p.56, Pp. 59 ratio 2.**

She maintained that the limitation law therefore does not apply to the 3rd Defendant father's land now in dispute which was at all material times held under customary tenure. See **ODEKILEKUN v. HASSAN (supra).**

She urged the Court to hold that the 3rd Defendant/ Counter Claimant's Counter Claim against the 1st and 2nd Defendants is not statute barred, therefore the 3rd Defendant is entitled to his claims for compensation haven proved a better title in respect to all that parcel of land measuring 400 feet by 1000 feet still under the acquisition of the Government represented by the 1st and 2nd Defendants.

Furthermore, learned counsel submitted that compulsory acquisition without complete compliance with the provisions of the law is completely null and void. She submitted that the Nigerian Constitution of 1999 (as amended) and the Land Use Act makes payment of compensation upon compulsory acquisition mandatory and as of right. She relied on the provisions of **Section 41(1) (a) (b) of the 1999 Constitution**

and the case of **UNIVERSAL MALTING CO. LTD & ANOR v. MESSRS, SINGOZ & CO. NIG. LTD & ORS (2015) LPELR-25620 (CA)**.

She urged the Court to grant the 3rd Defendant/Counter Claimant claims for a declaration that he is entitled to compensation

Finally, she urged the Court to resolve all the issues raised and argued in favour of the 3rd Defendant.

In his final written address, the learned counsel for the 1st and 2nd Defendants, **E.E. Akhimie Esq.** formulated two issues for determination as follows:

- 1) Whether the Claimants in their case have been able to disclose any cause of action against the 1st and 2nd Defendants; and**
- 2) Whether the 3rd Defendant's Counter Claim against the 1st and 2nd Defendants is not statute barred.**

The learned counsel argued the two issues seriatim.

ISSUE 1:

Whether the Claimants in their case have been able to disclose any cause of action against the 1st and 2nd Defendants.

Arguing this first issue, the learned counsel submitted that from the totality of the evidence of the Claimants and the Exhibits tendered, the Claimants have not made out any case against the 1st and 2nd Defendants in this case.

He submitted that from the Claimants' statement of claim and their witness depositions before this Court, there is no allegation of wrong made out against the 1st and 2nd Defendants in this case.

He maintained that the Claimants admitted that the land in dispute belongs to the Government. He said that the evidence of the Claimants' witnesses supports the case of the 1st and 2nd Defendants.

He submitted that the Claimants' case did not disclose any cause of action against the 1st and 2nd Defendants and he urged the Court to dismiss same against the 1st and 2nd Defendants. He relied on the cases of **WECHIE V OKWUWOLU [2015] 11NWLR (pt 1469) p126** paragraph **F-G**; and **AFOLOYAN VS OGUNRIDE [1990] 1NWL (PT 129) 369**.

Furthermore, he submitted that from Exhibit "A" tendered by the Claimants which is the Composite Survey Plan of the entire land acquired by the Government of Edo

State and the evidence led in this matter, it is clear that the land the Claimants and the 3rd Defendant is laying claim to in this matter is inside the large area of land which the then Bendel State Government acquired in 1976 from Evboriaria Community.

That being the case, learned counsel submitted that the right of the Claimants and that of the 3rd Defendant over the disputed portion before this Court became extinguished in 1976 upon the compulsorily acquisition of same by the then Bendel State Government and he relied on the case of ***SOBANDE VS IGBOKWE [2016] LPLR 40321***, where the Court of Appeal held that the effect of acquisition is to extinguish the previously existing interest in land and that upon the release of previously acquired land by excision, it does not relate back to the original root of title but rather a new root of title is founded in the grant made by the Government.

He also referred the Court to the cases of ***BAKARE V OMOGE & ORS [2018] (LPELR) 45339 (C. A); OLATUNJI VS MILITARY GOVERNOR OF OYO STATE [1995] 5 NWLR (PT. 397) 586; A.G. LAGOS STATE VS AJAYI [2000] 12 NWLR (PT. 682) 59; and LAGOS STATE DEVELOPMENT & PROPERTY CORPORATION [1987] 1 NWLR (PT. 50) 413.***

Counsel posited that in line with the above authorities cited, the Claimants also do not have the *locus standi* to institute this action against the 1st and 2nd Defendants.

Furthermore, he submitted that there is unchallenged evidence from the 1st and 2nd Defendants that the piece of land covered by Exhibit “D” is not the portion the Claimants and the 3rd Defendant are disputing in this suit and he referred the Court to Exhibit “E” and the 1st and 2nd Defendants’ witness written deposition on oath adopted on the 23rd day of October, 223, before this Honourable Court which clearly show that the land that was released back to Evboriaria community by Exhibit “D” in 1991 is not the one that is in dispute in this case.

He posited that the evidence shows clearly that the land in dispute is outside the land released by Exhibit “D” but inside the larger one acquired by the then Bendel State Government in 1976.

He therefore urged this Honourable Court to resolve issue 1 in favour of the 1st and 2nd Defendants as against the Claimants and hold that the Claimants has no cause of action against the 1st and 2nd Defendants.

ISSUE II:

Whether the 3rd Defendant’s Counter Claim against the 1st and 2nd Defendants is not statute barred.

Counsel submitted that the Counter Claim of the 3rd Defendant is statute barred by virtue of ***Section 6 (2) of the Limitation Law of the Defunct Bendel State 1976 now applicable to Edo State*** which provides as follows:

“No action shall be brought by any other person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him.”

He submitted that the implication of this section is that if an individual wishes to recover land or seek for compensation for his land that was compulsorily acquired, he must initiate legal proceeding within 12 years from the date his right to do so arose. He referred the Court to the case of ***BROSSA V EXECUTIVE GOVERNOR EDO STATE & ORS [2020]*** where the Court emphasized the importance of adhering to Statutory Limitation period.

Counsel submitted that looking at the Statement of Claim, Exhibit “B”, and “D” tendered before this Court by the Claimants, it is clear that the then Government of Bendel State now Edo State compulsorily acquired the land in 1976. The pleadings and evidence of the Defendants in this case and documents tendered clearly supports the facts that the “***land***”, the subject matter of this case is Edo State Government land.

He said that the Counter Claim of the 3rd Defendant asking for an alternative relief of compensation from the 1st and 2nd Defendants was filed for the 1st time before this Court in 2023, a period of over 48 years.

He submitted that the 3rd Defendant from the evidence of his witness and his pleadings was fully aware of the acquisition of the land in 1976 but he failed to submit his claim of compensation to then Government of Bendel State as required by Exhibit “B”.

He maintained that the 3rd Defendant’s claim for compensation is statute barred and he relied on the following decisions:

IMARHIAGBE V OMORODION & ANOR [2019] LPELR – 46954 (C.A); OLAGUNJU V ADESOYE [2009] 9 NWLR (Pt1146) 225; ALHAJI TIJANI J.A. SALAMI VS OKE ONIGBANJO [1956] SCNLR 254; OGUNBIYI VS ADEWUNMI (1988) 5 NWLR Pt. 93 215; and FADARE & ORS V ATTORNEY GENERAL OF OYO STATE [1982] 4 S.C

In respect of Exhibit “H”, the judgment in Suit No: B/122/92 tendered by the 3rd Defendant witness in this case, learned counsel submitted that the judgment is not binding on the 1st and 2nd Defendants in this case because they were not parties to the

suit. He submitted that it is trite law that the judgment of a court only binding on the parties and their privies.

In conclusion, he urged Court to resolve the two issues raised by the 1st and 2nd Defendants in their favour and dismiss the claims of the Claimants and the 3rd Defendant against the 1st and 2nd Defendants.

Finally, he urged the Court to resolve the two issues in favor of the 1st and 2nd Defendants.

In his final written address, the learned counsel for the Claimants, ***O.J. Erhabor Esq.*** formulated three issues for determination as follows:

- 1) Whether the Claimants' Claims as formulated are caught up by the rules of estoppel;***
- 2) Whether the 3rd Defendant's Counter-Claims are maintainable or statute barred; and***
- 3) Whether the Claimants are entitled to their Claims as contained in paragraph 26(1)-(5) of their Statement of Claim.***

Thereafter, the learned counsel argued the three issues seriatim.

ISSUE 1:

Whether the Claimants' Claims as formulated are caught up by the rules of estoppels?

Arguing this first issue, learned counsel submitted that relying on the pleadings and evidence before this Honourable Court, the Claimants have proved that this instant case is different from Suit No. B/122/92 over which the 3rd Defendant obtained judgment.

He maintained that the Claimants' claims in this suit are totally different.

He submitted that the guiding principles in the doctrine of estoppel are that the claims, the issues and the parties must be the same. He emphasised that the claims, the issues and the parties in the present suit are quite different from that of Suit No. B/122/92.

For ease of reference, he reproduced the Claims in the present suit and submitted that the main issue in this present action is whether the land the subject matter of this suit has been acquired by the State Government which was never an issue in Suit No: B/122/92.

He maintained that the Edo State Government and the present Claimants were never made parties to the previous suits and there is no nexus between the Claimants herein and the Defendants in the previous suit.

Furthermore, he posited that the Defendants in the previous Suit were not sued in any representative capacity and there were no unknown persons joined.

He referred the Court to the case of **ABDULRAHEEM & ORS v. OLUFEAGBA & ORS (2006) LPELR-11817(CA)** and copiously quoted from the judgment of the Court of Appeal. He also relied heavily on the case of **FAGBOHUN & ANOR v. IGANNA & ORS (2002) LPELR-20013(CA)**.

Counsel emphasised that the 3rd Defendant cannot use the Judgment in Suit No. B/122/92 as a bar to the Claimants in this action.

Furthermore, the learned counsel submitted that the judgment in the previous suit was given *per in curiam*. He pointed out that the said Suit No: B/122/92 was instituted in 1992 and on 25th August 1976, the land was acquired by then Bendel State Government and the acquisition was published in the State Government Gazette dated 9th September, 1976.

He said that if the existence of this acquisition and the official Gazette were brought to the attention of the court in the previous suit, the judgment would not have been given in favour of the 3rd Defendant's father. On this issue of *per in curiam*, learned counsel referred to the case of **Buhari v. INEC (2008) 19 NWLR pt.1120 pg.246 at page 372**

ISSUE 2:

Whether the 3rd Defendant's Claim is statute barred?

Learned counsel posited that from the totality of the pleadings and the evidence led at the trial, the land in dispute in this suit has been acquired by the defunct Bendel State Government in 1976 as shown by the Survey Plan as captured by the EDOGIS (Edo State Geographic Information Service) Orthophoto Imagery dated 16/12/2021 which was admitted and marked as an Exhibit in this case.

He submitted that the 3rd Defendant's alternative reliefs (e) – (f) of his Counter Claim, seeking compensation from the 1st and 2nd Defendants, are the clearest evidence yet of the 3rd Defendant's admission that the land in dispute has been acquired by the Edo State Government.

He said that the 3rd Defendant's witness also admitted during cross examination that the land was acquired by the State Government in 1976.

Counsel submitted that the 3rd Defendant's defence and counter-claims are not maintainable in the light of the overwhelming evidence that the land has been acquired since 1976. He maintained that with the acquisition, the alleged root of title or interest of the Claimants and the 3rd Defendant prior to the acquisition remains legally extinguished by the acquisition. He relied on the following cases: ***SOBANDE v IGBOKWE [2016] LPELR - 40321 (CA)***; ***ELEMORO & ANOR v ABIODUN (2014) LPELR - 23195 (CA)***; ***GBADAMOSI & ORS v AKINLOYE & ORS (2013) LPELR - 20937(SC)***; ***YUSUF v OYETUNDE & ORS [1998] 12 NWLR (PT.579) 485 at 493***; ***ARCHIBONG v UTIN (2012) LPELR - 7907 (CA)***; and ***BAKARE v. OMOGE&ORS (2018) LPELR-45339(CA) @ pages 36 – 38***.

He submitted that the 3rd Defendant is statute barred from bringing any action in 2021 when this action was filled or in 2024 when the 3rd Defendant for the first time sued by way of counter claim seeking compensation for land acquired in 1976 – 48 years ago in 2024. He relied on the following authorities: ***KULLOMA v. MODUBE & ORS (2021) LPELR-53366(CA)***; and ***UDOH & ORS v. AKWA IBOM STATE GOVERNMENT & ANOR (2013) LPELR-21121(CA)***.

ISSUE 3:

Whether the Claimants are entitled to their Claims as contained in 20(i) – (iv) of their Statement of Claim.

Learned counsel submitted that the Claimants have proved their entitlement to the claims as required by law in a civil case. He said that haven established the first two issues; the Claimants are entitled to all the reliefs which they seek in this suit.

He posited that the 3rd Defendant's attack against the Claimants' root of title is misconceived because the Claimants are not praying for declaration of title based on any traditional history. He said that the Claimants have conceded that the land has been acquired and that from the totality of the pleadings and evidence led by all the parties, the first relief (A) of the Claimants remains unchallenged.

He maintained that the pre-acquisition rights and title of the Claimants and the alleged 3rd Defendant's father's root of title haven been extinguished by the acquisition of the land are no more relevant to the live issues in this case. He said that all the authorities cited by 3rd Defendant on the issue of title have become merely academic.

He emphasised that the Claims of the 3rd defendant against the Claimants over the land that has been acquired by the government cannot stand and he relied on the cases of **ADEGBITE & ANOR. VS. AMOSU (2016) 15 NWLR (PT. 1536) 405:** and **OYEBO & ANOR V. LASISI & ORS 2019 LPELR-47882 (CA) Pp 46 -47.**

He posited that the Claimants' led unchallenged evidence of how the Claimants and the Evhoriaria community held series of meetings with the then Governor and officials of the Ministry of Lands for the release of their portion of the acquired land and that pursuant to their pleas, the letter of release, Exhibit D was issued by the government.

He submitted that the said Exhibit D created a new root of title in favour of the Claimants and he relied on the cases of **SOBANDE IGBOKWE Supra.** and **GBADAMOSI & ORS V. AKINLOYE & ORS (2013) LPELR – 20937(SC).**

He submitted that the 3rd Defendant or his agents have no right to continue to disturb the possession of the Claimants over land that does not belong to him. He therefore urged the Court to grant the order of injunction and award damages against the 3rd Defendant for his admitted acts of trespass and illegal claims over the land.

In conclusion, he urged the Court to grant all the claims of the Claimants some whom have been on the land for over 30 years without any disturbance from the Government except the 3rd Defendant.

Subsequently, the learned counsel for the Claimants filed a written Reply on Points of law to the written addresses of the learned counsel for the 1st, 2nd and 3rd Defendants respectively.

In his Reply on Points of Law, he submitted that pleadings are to contain the material facts, and not the legal results or consequences and he cited some authorities on the point.

Furthermore, responding to the submission of the counsel for the 1st and 2nd Defendants that the Claimants' case should be dismissed because there is no claim against them, he submitted that they are necessary parties who must be joined so that all the issues on the dispute to the land can be resolved with finality by all the parties.

I have carefully considered all the processes filed in this suit, together with the evidence led in the course of the hearing and the addresses of the learned Counsel for the parties.

In this suit, since the 3rd Defendant filed a Counter-Claim against the Claimants and cross-claimed against the 1st and 2nd Defendants, I am of the view that the two issues for determination in this suit are as follows:

- (i) *Whether the Claimants are entitled to the reliefs claimed in this suit; and*
- (ii) *Whether the 3rd Defendant/Counter-Claimant and Cross-Claimant is entitled to the reliefs claimed in this suit.*

Before I resolve the two issues for determination, I am of the view that I need to determine some salient preliminary points raised by the learned counsel for the parties on the competence of the Claims, Counter-Claims and Cross Claims of the Claimants and the 3rd Defendant respectively.

First is the challenge by the 3rd Defendant that the Claimant's suit is caught by the plea of *estoppel per rem judicatam*. In her final written address, the very learned counsel for the 3rd Defendant contended that the Claimants and their predecessors in title were parties to the former suit- **SUIT NO: B/ 122/ 92: JOHN O. IMASUEN v. NOSAKHARE OSAKWE & ORS** and that the issues in contention in the said suit are the same in this present suit and he referred the Court to Exhibit "H", the judgment of the court in the previous suit. She maintained that the said judgment which was in favour of the 3rd Defendant's predecessor in title is binding on the Claimants in this suit.

It is settled law that the plea of *estoppel per rem judicatam* is a rule of evidence whereby a party (or his privy) is precluded from disputing in any subsequent proceedings matters which had been adjudicated upon previously by a competent Court between him and his opponent. See the cases of *Morinatu Oduka and Others v. Kasumu and Another [1968] N.M.L.R. 281*; and *TORIOLA & ANOR V. WILLIAMS (1982) LPELR-3258(SC) (PP. 17 PARAS. C)*.

The principle behind the doctrine of *estoppel per rem judicatam* is that it is in the interest of the public that there should be an end to litigation. Therefore, where a cause of action has been canvassed and decided to finality between the same parties or their privies that should be the end of the matter. In such a situation, the parties and/or their privies are precluded from re-litigating the same cause of action. See the following decisions on the point: *Faleye & Ors v Otapo & Ors (1995) LPELR - 1235 (SC)*; *Ebba & Ors v Ogoto & Ors (2000) LPELR - 983 (SC)*; *Sylva v INEC & Ors (2015) LPELR - 24447 (SC)* and *Oleksander & Ors v Lonestar Drilling Co. Ltd & Anor (2015) LPELR - 24614(SC)*.

Where *estoppel per rem judicatam* is found to apply in a particular the case, the jurisdiction of the Court is effectively ousted. Thus *Section 173 of the Evidence Act, 2011* has codified the well-established principle of *estoppel per rem judicatam* when it stipulates thus:

"Every judgment is conclusive proof, as against parties and privies, of facts directly in issue in the case, actually decided by the Court and appearing from the judgment itself to be the ground on which it was based; unless evidence was admitted in the action in which the judgment was delivered which is excluded in the action in which that judgment is intended to be proved."

In the recent decision of the apex Court in the case of *OTUYAH & ORS V. OLIE & ORS (2025) LPELR-80097(SC) (PP. 16-18 PARAS. C) TSAMMANI ,J.S.C*, exposted thus:

"It is clear, therefore, that the plea of res judicata prohibits the Court from enquiring into a matter already adjudicated upon. A successful plea of res judicata therefore ousts the jurisdiction of the Court. It also estops the party affected per rem judicatam from bringing a fresh action or claim before the Court. It is based on a rule of public policy that no one shall be vexed twice on the same ground or for one and the same cause of action and on the same issue; and therefore, it is in the interest of the common good of the society that there should be an end to litigation..."

For the plea of estoppel per rem judicatam to succeed the party relying on it must establish the following requirements on preconditions as follows:-

- (a) That the parties or their privies are the same in both previous and present proceedings*
- (b) That the claim or issue in dispute in both action is same*
- (c) That the res or the subject-matter of the litigation in the two cases is the same*
- (d) That the decision relied upon to support the plea of estoppel per rem judicata is valid, subsisting and final and*
- (e) That the court that gave the previous decision relied upon to sustain the plea is a court of competent jurisdiction.*

Unless the foregoing requirements of the doctrine are fully established, the plea of estoppel per rem judicatam cannot be sustained. See the following cases: *YOYE V. OLABODE (1974) 1 All NLR Pt 2 pg 118; ALASE V. OLORI-ILU (1965) NMLR*

66; FADIORA V. GBADEBO 1978 3 SC 219; ADONE V. IKEBUDU (2001) 14 NWLR Pt 733 pg 385; and ODUMOSU & ANOR V. OLUWOLE & ANOR (2002) LPELR-12307(CA) (PP. 34-35 PARAS. A-A).

Applying the foregoing principles to the instant case, I have carefully examined the judgment in the previous suit **SUIT NO: B/ 122/ 92: JOHN O. IMASUEN v. NOSAKHARE OSAKWE & ORS** which was admitted as Exhibit “H” in the present proceedings.

Upon a juxtaposition of Exhibit “H” with the processes filed in the present suit, as the learned counsel for the Claimants rightly pointed out, that the claims, the issues and the parties in the present suit are quite different from that of Suit No. B/122/92.

As he rightly observed, the main issue in the present action is whether the land the subject matter of this suit has been acquired by the State Government and the issue of compulsory acquisition was not considered in the previous suit.

Furthermore, the Edo State Government and the present Claimants were not parties to the previous suit.

Finally, the previous suit was contested by the Claimant and the Defendants in that suit in their individual capacities and not in any representative capacity.

Thus, it is apparent that the issues and the parties in the previous suit are not the same as the present suit.

The authorities are settled that the aforesaid conditions must be satisfied conjunctively and the failure of any one of them is fatal to the plea of *estoppel per rem judicatam*. See the following cases: **IBENYE V AGWU (1998) 9 - 10 SC 57 at 27; AFOLABI V GOV. OF OSUN STATE (2003) 13 NWLR (prt.836) 119; ODUTOLA V ODERINDE (2004) 12 NWLR (Pt.888) 574; and GARBA V TSOIDA (2020)5 NWLR (Prt.1716) 1 at 25.**

Sequel, to the foregoing, I hold that the plea of *estoppel per rem judicatam* cannot oust the jurisdiction of the Court in this suit.

The next challenge is on the objection of the Claimants and the 1st and 2nd Defendants that the Counter-Claim of the 3rd Defendant for declaration of title to land is statute barred by virtue of the provisions of the Limitation Law.

In his final written address, the very learned counsel for the 1st and 2nd Defendants strongly submitted that the Counter Claim of the 3rd Defendant is statute barred by

virtue of *Section 6 (2) of the Limitation Law of the Defunct Bendel State 1976 now applicable to Edo State* which provides as follows:

“No action shall be brought by any other person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him.”

He pointed out that from the Statement of Claim, Exhibit “B”, and “D” tendered before this Court by the Claimants, it is clear that the then Government of Bendel State now Edo State compulsorily acquired the land in 1976. He said that the Counter Claim of the 3rd Defendant asking for an alternative relief of compensation from the 1st and 2nd Defendants was filed for the 1st time before this Court in 2023, a period of over 48 years.

I must state from the outset that the limitation laws of some states expressly excluded land held under customary tenure from their application, and in such instances, the issue of the non-applicability of limitation law to such land is settled. See *Odekilekun Vs Hassan (1997) 12 N WLR (Pt 531) 56, Ogunko vs Shelle (2004) 6 NWLR (Pt 868) 17, Okoye vs Eduzor (2018) LPELR 45102(CA)*.

Incidentally, Edo State is among the states where the statute of limitation is not applicable to land held under customary tenure.

For the avoidance of doubt, the provisions of *section 6 (2) of the Limitation Law of the defunct Bendel State 1976 as applicable in Edo State* provides thus:

“Nothing in this law affects action in respect of the title to land or interest in the land held by customary tenure”.

It is pertinent to note that the 3rd Defendant’s alleged root of title is the Oba’s Approval which vested a customary tenure over the land in dispute in his late father.

Apart from the statutory exclusion contained in *section 6 (2)* of our law, from the decisions of our superior appellate courts, it is settled law that the statutes of limitation are inapplicable to land tenures under native law and custom and this is because such land is held in perpetuity. See the cases of *EMOKPAE V. PAN OCEAN OIL CORPORATION OF NIG LTD & ANOR (2022) LPELR-57607(CA) (PP. 23-29 PARAS. D); OLUJOBADÉ & ANOR V. OLALUSI & ORS (2021) LPELR - 9808 (CA) PP. 17 - 18 PARAS. E- D; AYORINDE V. SOGUNRO (2012) 11 NWLR (PT. 1312) 460 AT 501; and AMODU AKANBI & ORS V. A. G. OF FEDERATION (2017) LPELR - 43121*.

From the foregoing, I hold that the objection that the 3rd Defendant's Counter-Claim is statute barred by virtue of the statute of limitation is not tenable.

The third salient point which resonated all through this case is the alleged compulsory acquisition of the property in dispute by the defunct Bendel State Government and the alleged release of the property by the government.

From the totality of the evidence adduced by all the parties in this suit it is an indisputable fact that the entire area including the Block D of the Evboriaria Government Layout was acquired by the then Bendel State Government on the 25th of August 1976 as published in the Bendel State Government of Nigeria Gazette dated 9/9/1976. The said Gazette was admitted at the hearing of this suit as Exhibit "B".

Furthermore, from the evidence adduced by the parties in this suit and in particular from the Composite Survey Plan of the entire land which was acquired by the Government admitted as Exhibit "A" at the hearing, it is clear that the land the Claimants and the 3rd Defendant are laying claim to in this suit is inside the large area of land which the then Bendel State Government acquired in 1976 from Evboriaria Community.

At this stage it is expedient for me to articulate the jurisprudence of the compulsory acquisition of property by government under the Nigerian Legal System.

It is settled law that the effect of acquisition of land by Government is to extinguish the previously existing interest in land. See the following cases: **GENERAL COTTON MILL LTD vs. TRAVELLERS PALACE HOTEL (2018) LPELR (46311) 1 at 48**; **ELEMORO vs. ABIODUN (2014) LPELR (23195) 1 at 55**; and **SOBANDE vs. IGBOEKWE (2016) LPELR (40321) 1 at 24**.

Furthermore, it is now settled position of law that when there is a revocation and acquisition of land by the State Government, the title of the previous owners in possession, if any, is extinguished and a fresh/new title is created after the acquisition. A new root of title is created by such acquisition and the former/previous title (communal, family or personal) becomes extinguished. See the case of **OTUNBA HAKEEM SOBANDE v. BARRISTER ANDY IGBOKWE (2016) LPELR-40321 (CA)**.

Based on the foregoing, I agree with the learned counsel to the 1st and 2nd Defendants that the legal effect of the compulsory acquisition of the property by the Government is that the title and the interest of the Claimants and the 3rd Defendant's alleged predecessors in title were effectively extinguished upon the acquisition of the entire

parcels of land including the one in dispute and the vesting of the land hitherto compulsorily acquired in the defunct Bendel State Government in 1976.

The legal implication of the acquisition is that a new legal title was created in favour of the said Bendel State Government who thereafter holds all the acquired parcels of land in trust pursuant to the instrument of acquisition which is Exhibit “B” in this proceedings.

In this suit the Learned counsel for the Claimants has conceded the fact that with the acquisition by the Government, the pre-acquisition rights and title of the Claimants and the alleged 3rd Defendant’s father’s root of title haven been extinguished.

The very learned counsel for the Claimants has ingeniously argued that the letter of release dated 6th November 1991 (Exhibits “D” & “D1”) has created a new root of title in favour of the Claimants which gives them the right to apply for statutory rights of occupancy in respect of the various parcels of land which they presently occupy.

Furthermore, in his Reply on Points of Law to the Claimants Final written address, the learned counsel for the 3rd Defendant has contended that it is trite law that if the government acquires land for a specific public purpose and fails to use it for that purpose, the land generally reverts backs to the original owners based on the principle that the acquisition was only justified for the stated “overriding public interest” and if that interest is no longer served, the land should be returned to its previous owners. He maintained that the land in dispute cannot be allotted to the Claimants in this case for private use.

At this stage, I must restate the principle that when the Government acquires a parcel of land by revocation of all previously existing interests in the land, no reversionary interest is left. The effect of acquisition is to extinguish the previously existing interest in land and upon the release of previously acquired land as in this case, it does not relate back to the original root of title but rather a new root of title is founded on the grant made by the Government. See the case of **OTUNBA HAKEEM SOBANDE v. BARRISTER ANDY IGBOKWE (2016) *supra*.**

Incidentally, in the instant case, the 1st and 2nd Defendants led evidence to show that the land in dispute is not part of the land that was released by the Edo State Government in 1991.

In their evidence the witness of the 1st and 2nd Defendants (D.W.1) testified that the area verged blue in the composite plan (Exhibit “A”) is the area the Claimants and the 3rd Defendant are laying claims to, while the area verged black is the area, the

Edo State Government released to the Evboriaria Community in 1991, while the area verged red is the entire plot of land, acquired by the defunct Bendel State Government in 1976.

Incidentally, at the hearing, the 3rd Defendant's witness also admitted that the land in dispute does not form part of the land that was released by the government.

It appears that the Claimants are the only party asserting that the parcels of land in dispute are part of the land released by the government to the Evboriaria Community. Unfortunately, this is not borne out by any of the documents which they tendered at the hearing. The letter of release Exhibits "D" and "D1" did not state the names of the beneficiaries of the parcels of land released neither did it indicate the geographical coordinates of the particular parcels of land released to the Evboriaria Community.

From the totality of the evidence before me, I hold that the Claimants have not established the fact that the parcels of land in dispute were part of the land released by the Edo state Government to the Evboriaria Community in 1991.

Having determined the aforesaid salient points, I will proceed to resolve the two issues for determination in this suit.

ISSUE 1:

Whether the Claimants are entitled to the reliefs claimed in this suit?

For the sake of clarity, it is necessary to reproduce the Claimants' claims in this suit which are as follows:

- (i) ***A DECLARATION that all that parcels of land presently occupied by the Claimants and other developers at Block D, Evhoriaria Government Layout, off Sapele Road, Benin City, Edo State forms part of the larger tract of land originally acquired by the then Bendel State of Nigeria Government (now Edo State Government) on 25th day of August 1976 as published in the Bendel State of Nigeria Gazette dated 9th September, 1976;***
- (ii) ***A DECLARATION that the Edo State Government having by her letter dated 6th November, 1991 released the said parcels of land to the Claimants occupants and their successors in possession, the Claimants are now statutory tenants or allottees of the Edo State Government over the said land occupied by them;***

- (iii) ***AN ORDER of perpetual injunction restraining the 3rd Defendant, his agents, servants, workers or privies howsoever from further disturbing, harassing or interfering with the peaceful possession of the Claimants and other occupants over the land;***
- (iv) ***AN ORDER directing the 3rd Defendant to pay to the Claimants the sum of N20,000,000.00 (Twenty Million Naira Only) being damages for the various acts of trespass, harassments, demolition threats and disturbances carried out against the Claimants by the 3rd Defendant, his agents, servants, and privies.***

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.*

From the findings which I have made so far it is evident that some of my findings have already determined the viability of some of the Claimants reliefs.

The first relief seeking a declaration that all the parcels of land presently occupied by the Claimants and other developers at Block D, Evhoriaria Government Layout, off Sapele Road, Benin City, Edo State forms part of the larger tract of land originally acquired by the then Bendel State of Nigeria Government (now Edo State Government) on 25th day of August 1976 as published in the Bendel State of Nigeria Gazette dated 9th September, 1976 automatically succeeds.

The second relief which is seeking a declaration that the Edo State Government having by her letter dated 6th November, 1991 released the said parcels of land to the Claimants occupants and their successors in possession, the Claimants are now statutory tenants or allottees of the Edo State Government over, cannot be granted because of my finding that the land in dispute was not part of the land released to the Evboriaria Community. The land in dispute is still under acquisition by the Edo State Government. Members of the public including the parties to the suit are at liberty to apply to the Edo state Government for a statutory right of occupancy.

The third and fourth reliefs for perpetual injunction and damages are consequential reliefs that can only flow from the Claimant's title or right to possession of the parcels of land in dispute. The maxim is ***ubi jus, ibi remedium*** (where there is a right there is a remedy).

Since the Claimants have not established their title to the land in dispute, they cannot be granted the reliefs of perpetual injunction and damages.

From the foregoing, the Claimants are only entitled to relief one. Consequently, issue one is partially resolved in favour of the Claimants.

ISSUE 2:

Whether the 3rd Defendant/Counter-Claimant and Cross-Claimant is entitled to the reliefs claimed in this suit?

In his Counter-Claim, the 3rd Defendant counter-claimed against the Claimants and the 1st and 2nd Defendants seeking reliefs for declaration, order for possession, perpetual injunction and damages. In the alternative, he is also claiming compensation for his alleged parcels of land acquired by the government.

I will commence by pointing out that a counter claim is a separate action, independent of the Claimant's claim. Therefore the burden and standard of proof on the 3rd Defendant/Counter-Claimant is the same with that required by the Claimants. See the case of *Onazi & Anor V C.G.C (Nig) Ltd & Anor (2015) LPELR-40583 (CA)*.

Like I observed in the determination of issue one, it is apparent that my earlier findings in this suit is bound to affect the determination of the Counter-Claim.

Upon a careful examination of the Counter-Claims of the 3rd Defendant together with the evidence which he adduced at the trial, it is apparent that the 3rd Defendant relied heavily on the judgment in the previous suit upon which he based his plea of *estoppel per rem judicatam*. I have already made a finding that the plea of estoppel cannot avail the 3rd Defendant in this suit.

Furthermore, I have made a finding that the land in dispute belongs to the Edo State Government vide the instrument of acquisition which is still subsisting. Based on this finding, the evidence adduced by the 3rd Defendant in proof of his root of title goes to no issue. It is settled law that the effect of acquisition is to extinguish the previously existing interest in land and the release of previously acquired land does not relate back to the original root of title but rather a new root of title is founded on the grant made by the Government. See the case of *OTUNBA HAKEEM SOBANDE v. BARRISTER ANDY IGBOKWE (2016) supra*.

In essence, the 3rd Defendant has no title to the land in dispute and is not entitled to the reliefs of declaration of title, possession, perpetual injunction or damages for any alleged trespass by the Claimants.

In respect of his alternative relief for payment of compensation from the government, it is settled law that a Claimant who desires to be compensated for disturbance to him arising from the compulsory acquisition has a duty to prove loss owing to that disturbance. See the case of **WILLIAMS v. KAMSON (1968) 1 ALL NLR 399**.

Furthermore, the payment of compensation must be predicated on the right to compensation. The 3rd Defendant has not established any right to compensation.

Finally, a claim for compensation is a claim for special damages which must be strictly proved. See the case of **BUO ANEKAKWE & SONS (NIG) LTD & ANOR V. NMA & ANOR (2022) LPELR-57286(CA)(PP. 47-49 PARAS. F)**.

To succeed in a claim for compensation, the assessment of compensation payable must be based on the value of the landed property at the time when notice of acquisition was served and without regard to any improvements made thereafter on it. See the English case of **MERCER v. LIVERPOOL, ST. HELENS AND SOUTH LANCASHIRE RAILWAY CO. (1904) A.C. 461**.

From the foregoing, I hold that the 3rd Defendant has failed to prove his Counter-Claims and is not entitled to any of the reliefs which he is seeking. Issue two is therefore resolved against the 3rd Defendant.

Having resolved issue one partly in favour of the Claimants and issue two against the 3rd Defendant, I hold that the Counter-Claims and the alternative claims of the 3rd Defendants are dismissed while the Claimants are granted a declaration that all that parcels of land presently occupied by the Claimants and other developers at Block D, Evhoriaria Government Layout, off Sapele Road, Benin City, Edo State forms part of the larger tract of land acquired by the then Bendel State of Nigeria Government (now Edo State Government) on 25th day of August 1976 as published in the Bendel State of Nigeria Gazette dated 9th September, 1976.

I make no order as to costs.

P.A.AKHIHIERO
JUDGE
18 /06/2025

COUNSEL:

O.J. Erhabor Esq. -----Claimants.

E.E Akhimie Esq-----1st & 2nd Defendants.

Mrs.Q.F.Akharekhandia-----3rdDefendant.