

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. AKHIHIERO
ON MONDAY
THE 12TH DAY OF OCTOBER, 2026.

BETWEEN: **SUIT NO: B/1110/2021**
ISAH MOHAMMED ----- CLAIMANT

AND

MR. EZEKWERE ARINZE SYDNEY ----- DEFENDANT

JUDGMENT

The Claimant instituted this suit against the Defendant (who was originally sued as a person unknown) vide a Writ of Summons dated and filed on the 30th day of November, 2021. Upon the Defendant's appearance, the Claimant amended his processes to reflect the Defendant's name.

The Claimant's extant pleadings is his First Amended Statement of Claim dated 10th November 2022, while the Defendant's extant pleadings is his Consequential Amended Statement of Defence dated 23rd of January 2023.

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

(a) A DECLARATION that the Claimant is the owner and in possession of all that piece or parcel of land measuring 50ft by 100ft lying and situate at Aigbe Street, Evbo-Akenuwa Community, Benin City, Edo State a place within the jurisdiction of the Honourable Court and therefore entitled to apply and be granted a statutory right of occupancy in and over the said land;

(b) A DECLARATION that the trespass of the Defendant on the Claimant's land is wrong and done without the consent and authority of the Claimant;

(c) The sum of N5,000,000.00 (Five Million Naira) as general damages from the Defendant for trespass and for activities inconsistent with the Claimant's rights and interest therein;

(d) AN ORDER directing the Defendant to vacate and remove whatever structure he may have erected on the Claimant's land without his consent and authority; and

(e) AN ORDER of perpetual injunction restraining the Defendant, his agents, servants, privies and or assigns from committing any further acts of trespass on the said land or from continuing to do anything inconsistent with the Claimant's rights and interest thereon.

In proof of his case, the Claimant testified for himself and called one witness, while the Defendant testified for himself and called two witnesses.

THE CLAIMANT'S CASE

The Claimant's case as can be gleaned from his evidence is that he is the owner of all that piece or parcel of land measuring 50ft by 100ft, lying and situate at Aigbe Street, Evbo-Akenuwa Community, Benin City, which he acquired by purchase from one Mr. Johnson Akenuwa in the year 2010.

In his evidence, the Claimant alleged that after the purchase, a Deed of Transfer dated the 25th day of September, 2010 was prepared and signed by the parties as evidence of the transaction. The said Deed of Transfer was tendered and admitted as a receipt as Exhibit "A" at the trial. He stated that before he acquired the land, he made enquiries from the Elders and Odionwere of Evbo-Akenuwa Community who confirmed to him that his predecessor in title was duly allotted the land. He further stated that his predecessor in title gave him a photocopy of an application for building plot (the Oba's Approval) covering the land, which was tendered and admitted as Exhibit "B".

The Claimant testified that he thereafter paid the prescribed levies to the Evbo-Akenuwa Community Development Association to enable him commence building on the land. Three receipts of the Association dated 04/04/2012, 27/4/2015 and 27/4/2015 were admitted as Exhibits "C1", "C2" and "C3" respectively.

According to him, his predecessor in title told him that he was allotted a parcel of land measuring 100ft by 100ft by the Odionwere and Elders of the Community, out of which he transferred 50ft by 100ft to the Claimant, and that the portion bought by the Claimant shares a common boundary with the remaining 50ft by 100ft which

Johnson Akenuwa also sold. He maintained that Johnson Akenuwa had been in undisturbed possession of the land since 1974 until he transferred part of it to him.

The Claimant alleged that he was in undisturbed possession of the land until the Defendant broke and entered it without his consent and started erecting a building thereon. He stated that before the trespass he had moulded 3,500 blocks and had 2 trips of sand and a full load of granite on the land, all of which were used up by the Defendant. He stated that when he became aware of the trespass, the Defendant's building was at the foundation level.

He testified that he reported the trespass to the Odionwere and Elders of the Community and that while the matter was pending, the Defendant continued building in spite of his protest. He also reported to the Police who visited the land and instructed the workers to stop work. He stated that the Defendant did not attend the community meeting but one Unity Aigbe appeared on his behalf and claimed that he was the owner of the land and had sold it to the Defendant, and tendered a photocopy of an Oba's Approval dated 15/2/1973 as his title document.

According to the Claimant, at the end of the investigation, the Odionwere and Elders of the Community found that the Oba's Approval produced by Unity Aigbe was not genuine, as the persons indicated to have signed it as allotment committee members were not members of the Evbo-Akenuwa plot allotment committee at the material time, and they held the Claimant to be the owner of the land. He alleged that Unity Aigbe is a land speculator acting in concert with one John Emuze, who was only a youth leader and not the plot allotment committee chairman or pointer, and that one Pa Roland Akenuwa was the chairman of the committee while one Samson Ugieva was the pointer. The Oba's Approvals dated 15/2/1973 and 18/2/1974 which he alleged Unity Aigbe had been parading were admitted as Exhibits "D" and "E" respectively.

Under cross-examination, the Claimant admitted that he is not an indigene of Evbo-Akenuwa Community and that he does not know the youths who were allocated land by the Community. He stated that when he bought the land it was a forest which he deforested, and that the street, Aigbe Street, was named after the Defendant's predecessor in title. He admitted that he did not go to the palace to confirm whether Exhibits "D" and "E", or his own Exhibit "B", were forged. He denied that the Defendant had commenced building on the land in 2009 before he acquired it, and stated that the Defendant's foundation was not on the land when he paid the development levies in 2012 and 2015. He stated that Johnson Akenuwa, who sold the land to him, is the son of Akenuwa, the owner of the community, but that he does not know his age.

The Claimant's sole witness, Samson Akeniwa, testified as CW1. He stated that he is the Secretary of Evbo-Akeniwa Community and that he deposed to his statement on oath with the consent of the Odionwere and Elders of Evbo-Akeniwa Community. He confirmed that the Claimant complained to the Odionwere and Elders about the trespass; that the Defendant did not attend the meeting convened, but Unity Aigbe attended on his behalf and tendered a photocopy of an Oba's Approval dated 15/2/1973 (Exhibit "D"); and that the Elders found the said approval not genuine and held the Claimant to be the owner of the land. He also stated that John Emuze was only a youth leader and not the plot allotment committee chairman or pointer.

Under cross-examination, CW1 admitted that he was not the secretary of the plot allocation committee as at 1973/74, nor when land was allocated to the youths of the community, and that he was not part of the committee that gave out the land. He stated that youths such as Johnson Akeniwa were given parcels of land but that Unity Aigbe was not given any land, although he also stated that "Daddy Aigbe" was allotted land in the community. He admitted that in his earlier statement on oath made in 2021 he did not mention the Oba's Approval dated 15/2/1973. He stated that the decision of the Elders was recorded in a minute book. He stated that he was born in 1954, that Johnson Akeniwa is his brother and junior to him, but that he does not know when Johnson Akeniwa was born. He admitted that he knew John Emuze as a youth leader and a member of the plot allotment committee. He named the persons given land along Aigbe Street as Atekhe Akeniwa, Frank Akeniwa, Francis Aigbe, Johnson Akeniwa and Augustine Akeniwa, and stated that the street was named after Francis Aigbe who was the first to build there. He stated that Unity Aigbe sold land to the Defendant and that although Unity Aigbe is not a member of Akeniwa community, Aigbe is part of the Akeniwa family.

At the close of CW1's evidence, the Claimant closed his case.

THE DEFENDANT'S CASE

In defence of this suit, the Defendant testified for himself and called two witnesses.

From the pleadings and the evidence adduced at the hearing, the Defendant's case is that he is the owner in possession of the parcel of land measuring 50ft by 100ft lying and situate at present day Aigbe Street, Evbo-Akeniwa Community, Benin City, which he acquired from one Mr. Unity Aigbe on the 19th day of September, 2009.

He stated that in 2009 he was introduced to Unity Aigbe, an indigene of Evbo-Akeniwa Community, who showed him a parcel of land measuring 100ft by 100ft at Aigbe Street and gave him a photocopy of the Oba's Approval in his name covering the land. He stated that he made enquiries from members of the community who

informed him that Unity Aigbe was duly allocated the land by the community's plot allotment committee headed by John Emuze, who was then the chairman/pointer. He then purchased 50ft by 100ft out of the said land for valuable consideration and Unity Aigbe executed a Deed of Transfer in his favour and put him in possession without hindrance from anybody.

He said that he commissioned a registered surveyor, Surv. A.T. Muraina, who produced Survey Plan No. ATM/ED/2011/039 dated the 3rd day of March, 2011 in his name, and that he erected a building foundation on the land after paying community development levies, but had to stop development for some time due to lack of funds. He maintained that the Claimant could not have acquired the land from Johnson Akenuwa in 2010, since he had acquired it in 2009 and had laid a foundation thereon. He denied meeting any blocks, sand or granite on the land, and maintained that he bought all the materials he used.

He stated that Unity Aigbe, who doubled as his building engineer, attended the community meeting on the invitation of the Elders and confirmed that he transferred the land to the Defendant, but erroneously gave the community a photocopy of an Oba's Approval for another parcel of land allocated to him elsewhere in the community. He said that John Emuze informed the Elders that the land in dispute was allocated to Unity Aigbe while Johnson Akenuwa was allocated a different parcel, and that the Elders asked the Claimant to meet Johnson Akenuwa to show him his land, as it appeared to be a case of mistaken identity. He further alleged that by the time of the community meeting his building was at roofing level, and that Johnson Akenuwa could not have been in possession of the land in 1974 as he was not born at that time.

At the hearing, the Defendant tendered a photocopy of an Oba's Approval which was admitted as Exhibit "F", his Deed of Transfer which was admitted as a receipt as Exhibit "F1", and a Survey Plan No. ATM/ED/2011/039 which was admitted as Exhibit "G".

Under cross-examination, the Defendant stated that he started to develop the land before he surveyed it. He stated that he, his predecessor in title, the Claimant and the Claimant's predecessor in title appeared before the community, and that DW1 identified the land of each person. He stated that the discussion was in Benin language which he did not understand, that he did not see anyone presenting title documents, and that DW1 identified his land as the one sold to him and told him that he shared the land to Unity Aigbe in 2005.

DW1, John Emuze, a bronze caster, adopted his statement on oath dated the 25th day of January, 2023. His evidence in chief substantially corroborates that of the

Defendant. Under cross-examination, he stated that he was the youth chairman and pointer of the plot allotment committee and a member of the committee, with the right to allocate land. He stated that the elders and members of the community deliberated on the matter, that he knows Samson Akenuwa but does not know whether he is the secretary of the plot allotment committee, that he had not associated with the community for quite a while, and that he was not aware that the parties brought their documents to the community for verification.

DW2, Unity Aigbe also testified in defence of this suit. He identified Exhibits "F", "F1" and "G". Under cross-examination, he stated that the land was allocated to him in 2006 when John Emuze was chairman and pointer. When he was shown Exhibit "A" (sic), he stated that it was his land allocation in respect of another land which he gave to the community by mistake, and that he could see his name on it with the date 1973. He stated that he did not apply to the Oba of Benin for land in Akenuwa Community in 1973, 1974 or 1975.

At the close of DW2's evidence, the Defendant closed his case.

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

THE DEFENDANT'S FINAL WRITTEN ADDRESS

In his Final Written Address filed on the 4th day of March, 2026 and deemed properly filed on the 16th day of July, 2026, the learned counsel for the Defendant, *Sir Chief Charles Asemota Esq.*, formulated two issues for determination as follows:

1. Whether the Claimant can rely on the evidence of a meddlesome interloper of sales to establish his root of title and to establish any of his claims by credible evidence as to entitle him to the declaratory relieves he sought; and

2. Whether the Defendant has proved his title to the land measuring 50ft x 100ft (Fifty Feet by One Hundred Feet) lying and situated at Aigbe Street, Eybo-Akenuwa Community, Benin City, Edo State now in dispute.

Arguing the first issue, the learned counsel referred to the five ways of proving title to land and relied on the case of *Ajiboye vs. Ishola (2006) Vol. 136 LRCN 1021 at 1025*. He submitted that the production of a document of title does not automatically entitle a party to a declaration, as the Court must be satisfied that the document is genuine and valid, duly executed, stamped and registered, that the grantor had the authority and capacity to make the grant, that the grantor had what he purported to

grant, and that the grant has the effect claimed. He relied on the case of *Ayanwale vs. Odunsam (2012) Vol. 204 LRCN 206*.

He posited that CW1 admitted under cross-examination that he was not the secretary of the plot allotment committee, was not present when land was allocated to the youths, and did not mention the Oba's Approval dated 15/2/1973 in his 2021 statement. He argued that the Claimant failed to call his predecessor in title, Johnson Akenuwa, the Odionwere, Roland Akenuwa or Samson Ogieva, and that CW1 knew nothing about the allocation of the land in dispute. He submitted that the Defendant's Exhibits "F", "F1" and "G" were not challenged and relied on the following decisions: *Yesufu vs. Kupper Int. N.V. (1996) 36 LRCN 411 at 416*, and on the cases of *Lagos State College of Education vs. Edun & Ors. (2004) Vol. 116 LRCN 3483 at 3487* and *Mil. Gov. Lagos vs. Adeyiga (2012) Vol. 205 LRCN 1 at 13* on the effect of unchallenged evidence.

The learned counsel submitted that the plot allotment committees of communities in Benin Kingdom are the official custodians of land allotted on the authority of the Oba of Benin, relying on *Owie vs. Ighiwi (2005) Vol. 124 LRCN 503 at 507*.

He set out the procedure for acquisition of land under Bini customary law as stated in the case of *Enabulele vs. Agbonlahor (1999) 67 LRCN 571; (1999) 4 NWLR 166*. He maintained that an approval once given remains valid until set aside by the Oba of Benin after hearing both parties. He contended that the Claimant failed to call any member of the plot allotment committee to confirm that the land was allotted to Johnson Akenuwa, and he relied on the case of *INEC vs. Oshiomole (2009) Vol. 174 LRCN 189*.

He further submitted that the identity of the land is the starting point in a claim for declaration of title and that the Claimant failed to establish the identity and boundaries of the land with certainty. He relied on the case of *Karimu vs. Lagos State Government (2012) 15 NWLR (Pt.1294) 620; Ayanwale vs. Odusami (2011) 18 NWLR (Pt.1278) 328; Ayuya vs. Yonrin (2011) 10 NWLR (Pt.1254) 135; Addah vs. Ubandawaki (2015) 7 NWLR (Pt.1458) 325; and Nwokorobia vs. Nwogu (2009) 10 NWLR (Pt.1150) 553 at 588-589*.

He argued that the Claimant must rely on the strength of his case and he cited the case of *Clay Industries vs. Aina (1997) 7 SCNJ 491* and urged the Court to disregard the Claimant's purported acts of possession as afterthoughts.

On the second issue, counsel submitted that the evidence of the Defendant and his witnesses was not discredited under cross-examination, that the Defendant has proved his root of title, and that where a claimant alleges trespass against a defendant

who claims the land, the claimant must prove a better title and he cited the case of *Idesoh vs. Ordia (1997) Vol. 47 LRCN 520 at 522*. He further submitted that the Defendant is entitled to general damages for trespass and he relied on the case of *Iyere vs. B.F.F.M. Ltd. (2009) Vol. 168 LRCN 143 at 156*.

In conclusion, he urged the Court to dismiss the Claimant's suit.

THE CLAIMANT'S FINAL WRITTEN ADDRESS

In his Final Written Address dated and filed on the 11th day of June, 2026, the learned counsel for the Claimant, *G.A. Izevbigie Esq.*, formulated a sole issue for determination as follows:

“Whether the Claimant is entitled to the reliefs claimed in view of evidence before the court.”

Arguing the sole issue, the learned counsel submitted that the Claimant has proved his case on the preponderance of evidence and he relied on the case of *Nduul vs. Wayo & 2 Ors. (2020) All FWLR (Pt.1026) 601*. He referred to the five ways of proving title to land as encapsulated in the cases of *Idundun vs. Okumagba (1976) 9-10 SC 227* and *Olotu vs. Omorogieva (2023) All FWLR (Pt.1200) 313 at 332*.

He conceded that the production of a document of title does not automatically entitle a Claimant to a declaration but submitted that the genuineness of the Claimant's title was never called to question, and that the Claimant demonstrated its genuineness by calling the Community Secretary who affirmed it and testified that the Defendant's predecessor in title was not given the land. He relied on the case of *Olukoya vs. Ashiru (2006) All FWLR (Pt.322) 1479 at 1506*.

He contended that DW2 admitted under cross-examination that he gave the document to the community during its investigation and that he never applied for land in the community in 1973 or 1974, although the title document he gave the Defendant relates to those years. He submitted that the Defendant's subsequent procurement of documents on a defective title would not avail him, and he relied on the cases of *Omiyale vs. Macaulay (2009) 7 NWLR (Pt.1141) 597* and *Ogunleye vs. Oni (1990) 2 NSCC 27*.

On the identity of the land, he submitted that the identity, size and location of the land is known to the parties and was admitted by the Defendant, so that a survey plan is not necessary. He relied on the cases of *Nruama vs. Ebuzoeme (2007) All FWLR (Pt.347) 723 at 736-737*; *Yar'adua vs. Bindawa (2018) All FWLR (Pt.953) 260 at 275*; and *R.M. Research & Development Council vs. Bamali (2023) All FWLR (Pt.1207) at 256*.

He further submitted that the Claimant has proved trespass and is entitled to damages even where no loss is proved and he relied on the case of *Registered Trustees of Deeper Christian Life Ministry vs. Ebhodaghe* (2017) All FWLR (Pt.877) 378 at 402-403.

On the relief for a perpetual injunction, he cited the case of *Ogan Ado & 6 Ors. vs. Amaiciri & 4 Ors.* (2006) All FWLR (Pt.392) at 398.

In conclusion, he urged the Court to grant the Claimant's reliefs.

RESOLUTION

I have carefully examined the evidence in this suit together with the submissions of the learned counsel for the parties. The Defendant did not file a Counter-Claim in this suit. Although the learned counsel for the Defendant formulated a second issue on whether the Defendant has proved his title and urged the Court to award general damages to the Defendant, there is no Counter-Claim before the Court upon which any relief may be granted to the Defendant. I am therefore of the view that the sole issue for determination in this suit is: whether the Claimant has proved his case on the preponderance of evidence to warrant the judgment of this Court in his favour.

SOLE ISSUE:

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 second and the fifth means of proof. To wit: proof by the production of documents of title; and by acts of long possession and enjoyment of the land. Both parties trace their title to allotments made by Evbo-Akenuwa Community and to Oba's Approvals, and both parties lay claim to a parcel of land measuring 50ft by 100ft parcel at Aigbe Street.

IDENTITY OF THE LAND

The learned counsel for the Defendant contended that the Claimant failed to prove the identity of the land. 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..."

In the instant suit, both parties described the land as measuring 50ft by 100ft at Aigbe Street, Evbo-Akenuwa Community. The Defendant pleaded in paragraph 2 of his Consequential Amended Statement of Defence that he is the owner in possession of that parcel, and the parties, their predecessors in title and the community representatives went to the land together, where, according to the Defendant under cross-examination, DW1 identified the land of each person. The Defendant's building, which the Claimant complains of, stands on the land, and the Defendant tendered Exhibit "G", a survey plan of the land he claims. However, in his evidence before the Court, the Defendant alleged that the Elders considered the Claimant's claim to be a case of mistaken identity of land, and that Johnson Akenuwa was allocated a different parcel.

From the evidence before the Court, both parties are laying claim to a parcel of land measuring 50ft x 100ft at Aigbe Street; the Claimant alleged that the Defendant

entered the land and erected a building on it without his permission. The Defendant alleged that he owns the land and he tendered a survey plan of the land as Exhibit "G". From the foregoing, it is apparent that both parties agree that the land in dispute is at Aigbe Street. Thus, the land in dispute is well known to the parties and its identity is not in issue in this suit.

Furthermore, the fact that the Claimant did not tender a survey plan is irrelevant. It is settled law that oral evidence of the description of the location of a land in dispute, as was done by the Claimant, will serve as sufficient proof of identity, and thus, dispense with the need to tender a Survey Plan, which in law is not sine qua non for a successful claim for declaration of title to land.

See the cases of *Ogedengbe V. Chief Balogun* (2007) 9 NWLR (Pt. 1039) 380; *Atanda V. Iliasu* (2012) LPELR - 19662 (SC); *Odojin V. Oni* (2001) 1 SCN 13 @ p. 44; and *DADA & ORS V. PASOKU & ORS* (2025) LPELR-82468(CA) (PP. 36 PARAS. A).

PROOF BY PRODUCTION OF DOCUMENTS OF TITLE

The Claimant's documents are Exhibit "A", the Deed of Transfer dated 25/9/2010 from Johnson Akenuwa, admitted as a receipt; Exhibit "B", a photocopy of an Oba's Approval which he stated was given to him by his predecessor in title; and Exhibits "C1" to "C3", the community development levy receipts.

It is clear that Exhibit "A" is not a registered legal instrument, having been admitted as a receipt, so it cannot convey legal title to the land in dispute. However, it is settled law that a purchaser of land who has paid and taken possession of the land by virtue of a registrable instrument which has not been registered acquires an equitable interest which can only be defeated by a purchaser for value without notice of the prior equity. See the following cases: *Agboola vs. U.B.A. Plc.* (2011) 11 NWLR (Pt.1258) 375 at 415; *Dauda vs. Bamidele* (2000) 9 NWLR (Pt.671) 199 at 211; and *Goldmark (Nig.) Ltd. vs. Ibafor Co. Ltd.* (2012) 10 NWLR (Pt.1308) 291 at 349-350.

In the case of: *Atanda vs. Commissioner for Lands and Housing, Kwara State & Anor.* (2018) 1 NWLR (Pt.1599) 32 at 55, *Sanusi JSC*, delivering the lead judgment of the Supreme Court restated the position thus:

"A registrable instrument which has not been registered is also admissible only to establish or prove equitable interest or to prove payment of purchase price."

However, the validity and the weight to be attached to Exhibit "A" depends on whether the Claimant's vendor, Johnson Akenuwa, had title to the land which he purportedly transferred to the Claimant. As the learned counsel for both parties rightly pointed out, the Court must enquire, among other things, whether the grantor had the capacity to make the grant and whether he had in fact what he purported to grant. The Claimant pleaded that Johnson Akenuwa was allotted 100ft by 100ft by the Odionwere and Elders of Evbo-Akenuwa Community in 1974 and had been in undisturbed possession until 2010.

The point must be made that Johnson Akenuwa, who is the Claimant's vendor and the only person with direct knowledge of the allotment to him, did not testify, although he was listed as a witness and his statement on oath was frontloaded. No member of the plot allotment committee that allegedly made the allotment to him testified. The Claimant's knowledge of the allotment is, by his own evidence, derived from what Johnson Akenuwa and the Elders told him. The Claimant's sole witness, the CW1 admitted under cross-examination that he was not the secretary of the plot allotment committee in 1973/74, was not a member of the committee, and was not present when land was allocated to the youths. His evidence that Johnson Akenuwa was given land is therefore not from his personal knowledge and amounts to hearsay evidence, see: ***Sections 37 and 38 of the Evidence Act, 2011***. In the case of ***AROGUNDADE v. THE STATE (2009) 6 NWLR (PT.1136) PAGE 165 AT 181-182 (G-B)*** the Supreme Court stated what amounts to hearsay evidence as follows:

"In the case of SUBRAMANIAN v. PUBLIC PROSECUTOR (1956) 1 WLR 965 AT 969, hearsay evidence was described in the following terms:-

"Evidence of a statement made to a witness called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement, it is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made."

See also the cases of ***BUHARI v. OBASANJO (2005) 13 NWLR (PT. 941) PAGE 1*** and ***FIRST BANK V. AZIFUAKU (2016) LPELR-40173(CA) (PP. 17-18 PARAS. E)***.

Clearly, from the foregoing authorities, the evidence of the CW 1 to establish the allocation of the land to the Claimant's vendor amounts to hearsay.

Coming to the alleged Oba's Approval of the Claimant's vendor which was admitted as Exhibit "B", it is settled law that an Oba's approval must be the culmination of a

series of steps in a chain. To acquire a good title in Bini customary law these steps in the chain (procedure) as set down must be fulfilled prior to the Oba's approval.

Under Bini Customary Law, the title to land is acquired through a grant by the Oba of Benin through a specific procedure which is as follows:

- a) A person intending to acquire land must make an application in writing to that effect through the Plot Allotment Committee responsible for the ward/community in which the land intended to be acquired is situate.
- b) Upon receipt of the application the Plot Allotment Committee will delegate some of its members to carry out an inspection of the land and they in turn will report back to the committee of their findings. The purpose of such inspection is to ascertain the plot to be granted, ensure it is free from dispute and confirm it had not been previously granted to someone else.
- c) Where the Committee is satisfied that the desired piece of land in question is dispute free, the committee will endorse the application and forward it to the Oba of Benin.
- d) The Oba of Benin will then grant his approval to the application in writing.

Accordingly, for a piece of land acquired under Bini customary grant to be valid, the above laid down procedure must have been complied with. These conditions were laid down by the Supreme Court as conditions to be fulfilled by a party who relies on the Oba's approval and grant. See the case of *AYORINDE V. KUFORJI (2022) LPELR- 56600(SC). EREBOR V. OSSAI (2022) LPELR-57991(CA) (PP. 8-10 PARAS. B)*. See also *Section 14 of the Evidence Act 2011*.

In proving title under Bini Customary Law, title is not always established merely by production of a document to which the Oba's approval has been endorsed, and this is particularly so where, as in the instant case, each of the parties has tendered such a document. *UHUNMWANGHO V. OKOJIE & ORS (1982) LPELR-3334(SC) (PP. 20-21 PARAS. C-C)*.

Thus, the mere production of document on which the Oba's purported approval was signified is not sufficient in law. See the case of *IGHODARO V. IYAYI (2015) LPELR-24906(CA) (PP. 32-33 PARAS. E)*.

In this suit, as pertaining to Exhibit "B", the Claimant's Vendor's Oba's Approval, the Claimant admitted that he did not verify it at the palace of the Oba of Benin. Furthermore, he did not lead any evidence on the steps taken by his alleged

predecessor in title before he obtained the said Oba's Approval, he simply tendered the document as his predecessor's root of title.

I hold that the Claimant's evidence to prove the validity of Exhibit "B" is palpably weak and cannot establish the validity of the said document.

At the trial, the Claimant sought to impeach the Defendant's root of title through Exhibits "D" and "E" and the evidence of CW1 on the finding of the Elders. The Claimant and CW1 testified that the Elders found the Oba's Approval produced by Unity Aigbe not genuine and held the Claimant to be the owner. The Defendant's evidence is that DW1 told the Elders that the land was allocated to Unity Aigbe, and that the Elders considered the matter one of mistaken identity. The minute book in which CW1 said the decision was recorded was not tendered, and no member of the council of Elders, other than CW1 as secretary, testified. CW1 also admitted that his earlier statement on oath of 2021 did not mention the Oba's Approval dated 15/2/1973.

Nevertheless, the Court cannot ignore the evidence of DW2 under cross-examination. DW2 admitted that the document bearing his name with the date 1973, which he gave to the community, was an allocation for another land, and he stated that he did not apply to the Oba of Benin for land in Akenuwa Community in 1973, 1974 or 1975. His evidence was that the land in dispute was allocated to him in 2006, while DW1 told the Defendant that he shared the land to DW2 in 2005, and the Defendant alleged that he bought his land sometime in September 2009 vide Exhibit "F1".

I must observe that the admission by the DW2 under cross-examination that the document bearing his name with the date 1973, which he gave to the community, was an allocation for another land, and that he did not apply to the Oba of Benin for land in Akenuwa Community in 1973 appears to have weakened the Defendant's case.

However, it is settled law that in a claim for declaration of title to land, a Claimant must rely on the strength of his own case and not on any weakness in the Defendant's root of title.

Furthermore, at the hearing, the Claimant's sole witness mentioned the names of some persons who were allotted land along Aigbe Street together with the Claimant's vendor such as Atekhe Akenuwa, Frank Akenuwa, Francis Aigbe and Augustine Akenuwa. But none of these people was called as a witness to substantiate this assertion.

From the totality of the evidence adduced by the Claimant to establish his title to the land in dispute, I am of the view that the failure of the Claimant to call Johnson Akenuwa or any of the persons allotted land along Aigbe Street (CW1 named him); the fact that the Claimant and the CW1 lacked personal knowledge of the allotments; the failure to tender the minute book; and the fact that the Claimant's Vendor's Oba's Approval Exhibit "B" was unverified renders the Claimant's case palpably weak and unreliable to establish his title to the land in dispute based on proof by documents of title.

PROOF BY ACTS OF LONG POSSESSION AND ENJOYMENT OF THE LAND

The Claimant testified that he deforested the land after purchase, moulded 3,500 blocks, and deposited sand and granite on it, and he tendered Exhibits "C1" to "C3" as the levy receipts of 2012 and 2015. He denied that the Defendant's foundation was on the land in 2012 and 2015. The Defendant, on his part, testified that he was put in possession in 2009, commissioned a surveyor to survey the land vide Exhibit "G" dated 3/3/2011, laid the foundation after paying development levies, and that his building was at roofing level by the time of the community meeting. He stated under cross-examination that he started developing the land before he surveyed it.

It is an established principle of law that exclusive possession gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrongdoers except the person who can establish a better title. See the case of *Ekretsu & Anor v. Oyobebere & Ors (1992) LPELR-1099(SC) (Pp. 27-28 paras. F)*. However, where both parties claim to be in possession, the law ascribes possession to the person with a better title to the land in dispute. See the cases of *Mogaji v. Odofin (1978) 4 SC 91*; and *Emecheta v. Okeke (2020) LPELR-50187(CA) (Pp. 41-42 paras. D-D)*.

It is noted that the Claimant, who pleaded the date of purchase and the date of the levy receipts, did not state when the Defendant entered the land. The Claimant's evidence that the Defendant used his blocks, sand and granite was not supported by any other witness or documentary evidence. Moreover, the Defendant denied meeting any building materials on the land when he allegedly purchased it and when he commenced his building. From the available evidence, the Defendant is presently in possession of the land in dispute having erected a building on it. The Claimant has failed to prove that he was the first to take possession of the land and that he has been in possession ever since.

CONCLUSION ON THE SOLE ISSUE

From the foregoing, I am of the view that the Claimant has failed to prove that his predecessor in title, Johnson Akenuwa, was allotted the land in dispute. A purchaser cannot acquire a better title than that of his vendor, and Exhibit "A", being an unregistered instrument admitted as a receipt, cannot cure the defect in the root of title. As earlier stated, the weakness of the Defendant's root of title cannot aid the Claimant.

Since the Claimant has failed to prove his title by any of the established means of proof, I hold that the sole issue is resolved against him.

On the whole, the Claimant's Claims are dismissed in their entirety. The Defendant has no Counter-Claim before the Court so his counsel's prayer for general damages in his final written address cannot be granted. He is, however, entitled to costs.

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

Hon. Justice P.A. Akhiero
12/10/26

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