**IN THE CUSTOMARY COURT OF EBONYI STATE**

**IN THE CUSTOMARY COURT OF ODOMOKE**

**HOLDEN AT ODOMOKE**

 **SUIT NO: 0CC/03/2022**

**BETWEEN**

1. **HON. MATHIAS NWIZIOGO NWIPHE**
2. **MR. FRIDAY NWIZIOGO NWIPHE PLAINFIFFS**

(for and on behalf of the entire family

of Nwiziogo Nwiphe Awoke)

**AND**

1. **MR. ALPHONSUS NWIGWE**

**2. MR. TAPOLEN NWECHARA IDENYI DEFENDANTS**

**3. MR. CHIMA EMMANUEL IDENYI**

**4. MR. OGWA IDENYI**

**DEFENDANT’S FINAL WRITTEN ADDRESS**

**1.0 INTRODUCTION**

* 1. Upon being served with the plaintiff’s claim dated the 25th day of January, 2022 the defendants filed their joint statement of defense dated the 17th day of June, 2022. The plaintiffs in proof of their claim called 4 witnesses and closed their case on the 14th June, 2022. The defendants in defense called 5 witnesses and closed their case on the 9th day of September, 2022.
	2. Photographs were tendered and admitted in evidence and marked exhibit 1- 12.

**2.0 BRIEF FACTS OF THE CASE**

* 1. The case of the plaintiff as contained in their claim is that they are the owners of the land, are in possession and hold the customary right of occupancy over the land subject of this suit which is situate at Evudulegu village and bounded by Elom Urom’s land, Ignatius onwe’s land, Chukwuma Nwokpo’s land and a stream called Ofia-Owu. They also alledged that the defendants trespassed on the land and continue to do so.
	2. The defendants in response to the claims of the plaintiffs stated that the land in dispute belongs to them as it is their family land deforested by their grandfather/father and was allotted to Nwigwe Idenyi(their brother) who finally gave it to his son Alphonsus Nwigwe.
	3. The case of the defendants is that in line with the native law and custom of Izzi land, parties subjected themselves to alternative dispute resolution before His Royal Highness Eze Solomon Iboza Nwiboko and members of his cabinet whose final verdict was for an oath of life and death be taken to determine the rightful holders of the customary right of occupancy which they took with the plaintiffs and their family administering the said oath.
	4. The defendants also counter claimed against the plaintiffs a declaration that the defendants are the true owners of the land and entitled to customary right of occupancy and other claims as seen on the statement of defense.

**3.0 ISSUES FOR DETERMINATION**

3.01. We most respectfully submit two issues for a just determination of this Honourable court in this suit, which are:

3.02. **“Whether from the facts and circumstances of this case, the plaintiffs have proved their claim against the Defendants as to be entitled to the reliefs sought in their claim?”**

3.03. **Whether from the facts and circumstances of this case, the Defendants have proved their counter claim against the Plaintiff as to be entitled to the judgment of this court.**

**4.0 LEGAL SUBMISSIONS**

4.01. We answer to the first issue above in the negative.

4.02. The Supreme Court in the cardinal case of **IDUNDUN** **VS** **OKUMAGBA** **(1976)** **1** **NWLR** **200,** established 5 methods of proving ownership of land to wit:

A. By Traditional Evidence

B. By production of document of title

C. By acts of the person claiming land such as selling and leasing.

D. By acts of long possession

E. By proof of connected or adjacent land

4.03. The fundamental question begging for judicial attention of this court is: which of the above mode have been proved by the plaintiffs in their wasteful attempt to establish title to the land in dispute?

4.04. It is worthy to remind your honors, that the plaintiffs didn’t tender any documents of title in this suit to establish their frivolous claim over the land in dispute. The Plaintiffs have also failed to proof the ownership of connected or adjacent land as required by law.

4.05. The plaintiffs’ claim of act of long possession was vehemently punctured by the pictorial evidence of the Defendants before the court. The Defendants tendered pictures evidencing the fact that the Defendants have been in possession until the plaintiffs evaded his home, dismantled his house and destroyed his crops on the land. These pieces of evidence were not contradicted by any cogent and compelling evidence from the plaintiffs. We refer the court to **exhibit 1 to 12** in its record.

4.06. Again, the plaintiffs neither established by oral evidence before this court, any act of leasing, selling or any acts whatsoever capable of confirming the ownership of the said land in dispute on the plaintiffs.

4.07. The plaintiffs pitiably tried to hitch their claim of title on traditional evidence. The question again is: to what extent has the evidence of the plaintiffs established same? The plaintiffs gave vague and unbelievable explanation of how their father deforested the land. The plaintiffs failed to explain how their father could deforest the land and handover the same land to a stranger to caretaker and manage same.

4.08. This bundle of misconceived facts raise a lot of question. How conceivable is this? Is it that the plaintiff’s father had no uncles, sons to handover the land to?

4.09. Nevertheless, PW1 made it more complicated when he admitted that he was not born when his father travelled and handed the land to the Defendants grandfather. By inference, everything Pw1 said concerning the origin of the land is nothing but hearsay.

4.010. In the case of **ACHIAKPA VS NDUKA (2001) 74 NWLR (PT 734) 623@633**, the supreme court held that it is not sufficient for a party who relies on proof of title to land on the basis of traditional evidence to merely plead vaguely that his predecessor in title possessed the land from time immemorial, such a party must plead and prove facts as to:

1. Who founded the land
2. How the land was founded
3. Particulars of the intervening owners through which he claims.”

 See also the case of **NGENE VS OKOH $ ANOR 2018 LPELR 449 (CA)**

4.011. Your honors, more worrisome are the inconsistencies in the evidence of the Plaintiffs witnesses. PW1 who is the first plaintiff during cross examination stated “the conflict over the land in dispute started in 2018 ……” then PW2 who is the 2nd plaintiff during cross examination stated “there was no conflict over the land in dispute before 2020”. Both evidence are contradictory in ascertaining exactly when the title to the land became a dispute.

4.012. In the case of **ONWUZURIKE** **VS** **EDOZIEM** **(2016)** **6** **NWLR** (**PT**.**108**) **215** @**239**, the court held that it is trite that a party who gave conflicting evidence to establish a root of title cannot have a pronouncement as to title in his favor.

4.013. Relying on all the evidence of the plaintiffs in this suit and all authorities sited we submit that the plaintiffs have not proven on the preponderance of evidence to be granted their claim but rather the defendants who have proved their title to the land by their evidence before this court. Finally in the case of **OGUNJEMILA** **VS** **AJIBADE** **(2010)** **11** **NWLR** **PT** **1206** **559**, the court stated clearly that it is settled law in an action for declaration of ownership to land, party claiming ownership of land must succeed on the strength of his case and not on weakness of the other party’s case. Where the onus is not discharged, the weakness of the other party’s case will not help him and the proper judgment is for the other party.

4.014. In view of these weaknesses in the case of the plaintiff, we urge the court to view in its unfathomable wisdom, the erudite and incontrovertible point of law and facts raised by the Defendants and resolve issue one in favour of the Defendants.

**5.0 ISSUE TWO**

5.01. **Whether from the facts and circumstances of this case, the Defendants have proved their counter claim against the Plaintiff as to be entitled to the judgment of this court.**

5.02. We answer the above issue in the affirmative that the defendants have established on the preponderance of evidence that the Defendants have customary right and title over the land in dispute and as such are entitled to the judgment of this court.

5.03. Drawing from the yardsticks for proving title as adumbrated by Supreme Court in the case of **Idundun v Okumagba** above, the Defendants relied heavily on both traditional evidence and act of long possession to establish undiluted ownership over the land in dispute.

5.04. As contained in the evidence of DW1 to DW3 before the court, the Defendants established how their ancestors deforested the land and the chain of unbroken inheritance that flowed from the Defendants grandfather, to the 1st Defendant’s father then to the 1st defendant. The Defendants also tendered exhibit 1 to 12 to evidence act of long possession that has lasted for more than two decades. These pieces of evidence were not challenged nor contradicted.

5.05. The 1st defendant who testified as DW1 who stated clearly that the land in dispute belongs to them as it was deforested by his father who was in long possession of same before he died and he shared his lands among his children giving the particular land In dispute to Nwigwe Idenyi who also gave it to his son Alphonsus Nwigwe.

5.06. **In the case of** **IJELADE V. SOROYE 1998 5NWLR PT.549, 284 RATIO 11,** the court stated that the law is clear that where two persons make conflicting claims to possession of land, the law ascribes possession to the person that can prove better title to land.

5.07. **In the case of APATA VS. OLANLOKUN (2013)56 PT2. NSCQR 801 AT 830, per S.S. Alagao JSC,** which held that where land ownership is claimed in customary law the best evidence is that of traditional title proved by way of ancestral history of ownership.

5.08. To further lay credence to the claim of ownership, the Defendants witnesses established before the court the existence of a traditional oath taking, which the Defendants took before His Royal Highness. The said oath of life has elapsed and it was resolved in favour of the Defendants.

5.09. The plaintiff admitted the fact that the oath was taking.

5.010. In the case of **UMEADI** **VS** **CHIBUNZE** (**2020**) **NWLR** **PT** **1733 405** where the apex court confirmed that oath taking was a valid protest under customary law arbitration and the following positions endorsed:

1. The applicable law in the matter was no longer traditional history of the matter prior to 1940 when the matter was filed but the law of oath-taking.
2. Parties that believe in efficacy of JuJu and resort to Oath-taking to prove ownership of land will be bound by it.
3. Where customary arbitration is pleaded and proved, it is binding on the parties and capable of constituting estoppel.
4. Where traditional arbitration resulting in Oath-taking applies in a declaration of title to land, common law principles in respect of proof of same no longer apply.

5.011. From the cross examination of pw1 he admitted that parties to the suit were invited by H.R.H Eze Iboza for amicable settlement of which he was present and it was decided that oath taking was taken as a final way to resolve the matter but he travelled so wasn’t present on the day of the said oath taking. He also admitted that oath taking was the most viable means of resolving conflicts in consonance with Izzi culture.

5.012. **Niki Tobi J.S.C.** further held in the same case that it is wrong for the appellants who were instrumental to the exercise of the Oath taking to resile from it. Such a position is not available to them in law.

5.013. From the cross examination of PW2 he admitted that the matter was instituted in representative capacity and wasn’t sure whether any of his family members partook in the oath taking on behalf of his family, he finally agreed that if any of his family members was there and the said oath done in a proper way he would have been bound by it.

5.014. From the magnitude of evidence of the defense through its witnesses it is cogent enough that both parties were present and ably represented from when they were invited by H.R.H. Eze Iboza and his Cabinet members for amicable settlement till when the oath was validly taken. DW5 in his testimony when asked all he knew about the land in dispute said that he being a member of Eze Cabinet was delegated to supervise the oath taking on the land in dispute which they stay till after the oath was taken before leaving for their various homes.

5.015. In the case of **UMEADI** **VS** **CHIBUNZE** supra held that Respondents established by cogent evidence, the custom that a family member who defends family land by Oath taking automatically becomes the exclusive owners of such family land. The Respondents were entitled to declaration of title to the land in dispute.

5.016. From the facts of this case pw3 in his testimony in chief led evidence to the facts that both families agreed that if he survives the oath the land belongs to Idenyi Nwonu.

5.017. Oath taking, being a valid mode under customary law arbitration and also a credulous method used under customary law concerning the truth of a matter has been recognized by the courts in **CHIEF ETIM USUNG & ORS v. CHIEF INYANG E. NYONG & ORS. (2010)2 NWLR (PT 1177) 83** Furthermore, once it is established that the parties to any case had earlier voluntarily submitted their dispute to the traditional arbitration, agreed to be bound by the outcome and had accepted its verdict in concomitance with the principles of natural justice, equity and good conscience, the Court have always refused to let any of the parties back out of the decision as it would be deemed that the dispute stands efficiently settled.

5.018. We refer Your Honours also to the cases of **JOHN ONYENGA & 2 ORS VS CHIEF LOVE DAY EBERE & 2 ORS (2004) 13 NWLR PT 889, 20, 40-41.** In their words, “where two parties to a dispute voluntarily agree to resolution of their dispute by oath taking in accordance with the customary law, neither of them can there after resile from their exercise of oath taking”.

5.019. It is our humble submission that the defendants have proved their case that there was a valid oath taking ceremony organized by the traditional ruler to which, parties relying on the possible outcome, subjected themselves to such arbitration in order to ascertain the true ownership of the land. Hence, the outcome of such being in favour of the defendants, same is therefore entitled to the counterclaim sought in this suit. We urge the court to so hold.

**6.0 CONCLUSION**

We humbly urge your Honours to graciously place heavy reliance on the testimonies of the witnesses in the determination of this suit and grant the defendants their reliefs as per their counter-claim.

May the court be pleased.

**DATED THIS \_\_\_\_\_\_\_\_\_ DAY OF ­­­­\_\_\_\_\_\_\_\_\_\_2022**

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 **√ S.O. IGBOKE, ESQ.**

**S.N. EGBO, (MRS.)**

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