

**IN THE HIGH COURT OF JUSTICE EKITI STATE OF NIGERIA**  
**IN THE ADO JUDICIAL DIVISION**  
**HOLDEN AT ADO-EKITI**

**BEFORE HIS LORDSHIP HON. JUSTICE E.B. OMOTOSO-JUDGE**  
**THIS TUESDAY, THE 19<sup>TH</sup> DAY OF AUGUST, 2025**

SUIT NO: HAD/82/2021

BETWEEN:

CHIEF GABRIEL ADESOYE BODUNDE .....CLAIMANT  
(The Olokun)  
For himself and on behalf of  
Okun Community, Imesi Ekiti

AND

1. BELLO OGUNBO

2. RETIRED SGT FASUNLADE

For himself and on behalf of Agunsoye

Ruling family of Imesi-Ekiti

3. HON. FESTUS OLU OLADIMEJI

For Himself and on behalf of Omilodi Ruling Family of  
Imesi-Ekiti

.....DEFENDANTS

**JUDGMENT**

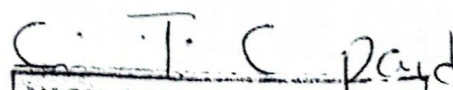
By the Amended Writ of Summons and paragraph 18 (a) – (e) of the  
Amended Statement of Claim, the claimant claimed against the defendants as

follows:

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BY  
  
ADEWUMI D. O.  
DIRECTOR OF LITIGATION

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**HIGH COURT OF JUSTICE**  
0116 SEP 2025  
ADO-EKITI  
NIGERIA



***(a) A declaration that the piece of land, lying being and situate at Okun with the following boundaries namely; (i) Oyimo River by the East, (ii) Aekeeke Street in the North, (iii) Oka Community land in the South and (iv) Ose River in the West is the property of claimant's Okun Community and as such entitled to the Customary right of occupancy of the said land.***

***(b) A declaration that the 1<sup>st</sup> defendant who is a tenant of claimant has misbehaved and misconducted and himself on the land by laying claim, thereon and as such not legally entitled to stay or remain thereon as claimant's tenant.***

***(c) An order of permanent or perpetual injunction restraining the defendants their agents, servants, assigns and privies from laying claim to claimant's Okun Community land with the following boundaries namely;***

***(i) Oyimo River by the East,***

***(ii) Aekeeke Street in the North; (iii) Oka Community land in the south and (iv) Ose River in the West now; forthwith and hence forth.***

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***(d) The sum of (N50,000,000.00) fifty million naira damages against the defendants being compensation for defendants' conduct on claimant's land described above.***

Claimant gave evidence and called five (5) witnesses in proof of his case. 1<sup>st</sup> and 3<sup>rd</sup> defendants gave evidence and called one witness in their defence. Second defendant gave evidence but called no witness. It is on record that both the 1<sup>st</sup> & 3<sup>rd</sup> defendants filed a Joint Amended Statement of Defence and called witnesses the same witnesses.

CW1: CHIEF BABATUNDE CLEMENT ADOJUTELECAN, after being sworn on Holy Bible, adopted his written statement on oath deposed to on 2<sup>nd</sup> day of May, 2023 as his evidence in chief before this Honourable Court. According to the witness, he is the Sobalaju of Arigidi Akoko, Ondo State and resident at No. B/17 Ilepa Street, Arigidi Akoko Okun land, in Imesi Ekiti. The claimant is his landlord, having granted land to his late father for farming purpose and upon the death of his father he inherited the farmland of his father as claimant's family tenant. As royalties, he gave tubers of yam and palm oil to the Olokun (the head chief) annually. According to the CW1, the Olokun is the owner of the land and he had never seen the defendants on the land.

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Under cross-examination, by 1<sup>st</sup> & 2<sup>nd</sup> defendants, the CW1 who claimed that he hailed from Arigidi Akoko in Ondo State, admitted that he could only speak in respect of the farmland occupied by them. He did not know the extent of the land in dispute. He, however, claimed to know Aekeeke Stream which is the boundary of the area of farmland occupied by him and is known as Olokun land and not Eri land.

Under cross-examination by learned counsel for the 2<sup>nd</sup> defendant, Temitope Kolawole, Esq, he said that the 2<sup>nd</sup> defendant is one of the trespassers on the Olokun land. He alleged that the 2<sup>nd</sup> defendant challenged them on the land and land claim of ownership over same.

CW2: ABIOLA OLORUNDARE of Aba Oke the Okun land Imesi Ekiti adopted his written statement on oath deposed to on 2<sup>nd</sup> of May, 2023 as his evidence in chief. He testified that his late father was claimant's tenant in his lifetime and upon his demise he inherited his late father's farmland. That nobody ever disturbed his occupation and that of his late father of the land over which he paid royalties to the claimant annually.

Under cross-examination by Rotimi Adabembe, Esq, representing the 1<sup>st</sup> and 3<sup>rd</sup> defendants, the CW2 stated that Okun land is situate at Imesi Ekiti but every Quarter has its own land. His hut, according to him, is situate at Oke Ede



Okun land. He made mention of other huts such as Aba Papa, Aba Omotola, Aba Eli, Aba Oke-Ede, Aba Erusu, Aba Okebola, Odo Oro, Aba Ese and Aba Arigidi which are all situate at Okun land. He gave the boundaries of the land in dispute as follows:-

- On the 1<sup>st</sup> side, Eri farm
- On the 2<sup>nd</sup> side is, Isigun farm
- On the 3<sup>rd</sup> side is Oyinmo River
- Oyinmo farm is between Okun and Irun in Ondo State.

According to the CW2, there is an ocean between Ore farm and Okun farm.

Under cross-examination by the 2<sup>nd</sup> defendant's learned counsel, Temitope Kolawole, Esq, the witness testified that the 2<sup>nd</sup> defendant is one of the trespassers on the land in dispute and he is a Prince in Imesi Ekiti.

CW3: JIMOH SALIU of Idogun Quarters, Imesi Ekiti adopted his written statement on oath deposed to on 2<sup>nd</sup> May, 2023 as his evidence in chief. He is also a tenant on the land in dispute , having inherited his farmland from his late father who was claimant's tenant in his lifetime. According to him, his grandfather was originally the claimant's tenant.

Under cross-examination by Rotimi Adabembe, Esq, representing the 1<sup>st</sup> & 3<sup>rd</sup> defendants, he is not a native of Imesi Ekiti while acknowledging the occupant



of the Onimesi of Imesi's stool Ekiti as the prescribed authority in entire Imesi Ekiti. The land in dispute is part of Imesi Ekiti he testified further.

Under cross-examination by 2<sup>nd</sup> defendant's learned counsel, Temitope, Kolawole, Esq, he stated that the 2<sup>nd</sup> defendant did not encroach or trespass on the land in dispute.

CW4: FOLAHAN AKANDE JACOB of B/17, Ilepa Street, Arigidi Akoko adopted his written statement on oath deposed to on 2<sup>nd</sup> day of May, 2025 as his evidence in chief. His late father was claimant's tenant and upon his demise he inherited his farmland. He testified further that his late father and himself paid tributes to the claimant's family in form of tubers of yam and palm oil. According to the CW4, Claimant is the owner of the land.

Under cross examination by Rotimi Adabembe, Esq representing the 1<sup>st</sup> & 3<sup>rd</sup> defendants, he testified that he did not know how the claimant's father got to the land in dispute, he (i.e the CW4) not being an indigene of Imesi Ekiti.

While answering questions from Temitope Kolawole, Esq, 2<sup>nd</sup> defendant's learned counsel, the CW4 gave the name of the disputed land as Okun land. He, however, said that the 2<sup>nd</sup> defendant did not disturb the tenants on the land in dispute.

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CW5: JULIUS ADEMILOYE of Idosere Quarters, Imesi Ekiti adopted his written statement on oath of deposed to on 24<sup>th</sup> November, 2023 as his evidence in chief. He is 93 years old and resident at Oke-Ode Street, Imesi Ekiti. According to him, Okun Land belongs to Okun Community and not the Onimesi of Imesi Ekiti. The Olokun came to Imesi as a result of inter tribal war and made Imesi a refuge and was guest of Idogun Quarters of Imesi Ekiti who gave him land in Imesi Ekiti for residential purposes while Isigun gave Okun people land for farming but his land at Okun was at no time taken from him as he remains the owner of same. He testified further that the Onimesi of Imesi Ekiti lacked the power to demand tributes from the claimant's tenants because the defendants and the Onimesi had no land in Okun Community which is headed by the claimant. He testified further that Onimesi's land is situate at Okitiagbe while Okun land belonged to the claimant. That the 2<sup>nd</sup> defendant's family land is situate at Ita Oorisa in Imesi Ekiti while that of the 3<sup>rd</sup> defendant is situate at Apomo and Itarisa near Ose River or Odo ona.

Under cross-examination by Rotimi Adabembe, Esq, the CW5 stated that he is neither a member of Okun family nor farm at Okun farm settlement. According to him, Oba Ojugbaye was the first settler at Imesi. He further testified and admitted that Okun land initially formed part of Imesi Ekiti but Okun is now



autonomous and independent of Imesi Ekiti. He admitted that Okun met Oba Ojugbaye at Imesi Ekiti.

Under cross-examination by Temitope Kolawole, Esq, the CW5 stated that the 2<sup>nd</sup> defendant is not claiming ownership of the disputed land but has his own family land.

CW6: (CLAIMANT) ENGINEER CHIEF GABRIEL BODUNDE, The Olokun of Okun Community, Imesi Ekiti resides at 3, Oremeji close Okun Imesi Ekiti. He adopted his written statement on oath and additional statement on oath deposed to on 29<sup>th</sup> July, 2022 and 21<sup>st</sup> day of March, 2023 respectively as his evidence in chief. According to the claimant, the 1<sup>st</sup> defendant is his tenant at Aba Francis while the 2<sup>nd</sup> defendant is a retired military officer being sued for himself and on behalf of the Agunsoye Ruling House of Imesi's Ekiti. He, i.e the claimant is the Olokun and head of Okun Community of Imesi Ekiti. The 3<sup>rd</sup> defendant is a farmer and is sued for himself and on behalf of his Omilodi ruling house of Imesi Ekiti. Claimant instituted this action for himself and on behalf of Okun Community, the bonafide and genuine owner of the Okun Community land lying, situate, known, called and referred to as "Okun land" whose boundaries are as follows:-

(a) Oyinmo River by the East;

(b) Aekeeke Street in the North;





(c) Oka Community land in the South and

(d) Ose River in the West.

According to the claimant, the land is well known to the parties in this suit.

He testified further that the Olokun Ajimutabaoogun, his progenitor, was the first settler on the land in dispute, by deforesting and planting both food and cash crops on same. That he was never disturbed on the land, having migrated from Ile-Ife many years ago and settled on the land in dispute.

Those ancestors who inherited the land in dispute from Olokun Ajimutabaoogun in succession are:-

(a) Olokun Arinikootokagun,

(b) Olokun Osanyinrotupin

(c) Above Olokuns also cultivated the land and planted similar food and cash crops, held the land in trust for the Olokun Community and upon the death of Olokun Osanyinrotupin in 1939, the claimant succeeded him in 2016 and held the land in trust for the Okun Community.

According to the claimant, he has tenants on the said land who are from various towns and villages such as Oka, Arigidi, Iku, Okeagbe, Ikare Akoko, Erusu Akoko, etc. who are resident on the land in dispute as camps at Aba Francis, Aba Papa, Aba Motola, Aba Eli, Oke Ede, Aba Erusu, Oke Bola, Italoke/ oriokuta, Isakunmi,



Odo oro, Aba Esq, Aba Arigidi, iku 1, Iku 2, etc. He testified further that those aforesaid various tenants paid royalties to him annually in form of tubers of yams, palm oil, palm wine, antelope and money.

Testifying further, the claimant said that of recent the defendants began to lay spurious claim to his Okun Community land whereas they are not the owners of same. He recalled that sometime in 2018, the then Onimesi, Oba Adeyeye representing the 2<sup>nd</sup> & 3<sup>rd</sup> defendants ruling houses claimed that the land in dispute belonged to him as the prescribed authority of Imesi Ekiti but the Okun Community denied the Onimesi's claim as the defendants, including Onimesi, have no land in Okun land. It is not a Royal land, he said further. That the 1<sup>st</sup> defendant who is being illegally aided by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants and claimant's tenant is also laying spurious claim to Okun Community land. He likened the action of the 1<sup>st</sup> defendant to a challenge to his overlordship title and that of Okun Community which is a serious misconduct and misbehavior on his part. That he is no longer ready to tolerate 1<sup>st</sup> defendant's misbehavior.

In his additional written statement on oath, he described the a1<sup>st</sup> defendant's father, Francis Bello, as his tenant who paid tribute to Olokun Community while he denied that the 3<sup>rd</sup> defendant is the overall head of Omoowas (i.e Princes and Princesses in Imesi Ekiti) because, according to him,



Chief Saloro is the overall head of Omoowas. Claimant denied that he is a tenant of Onimesi. He further testified that Oba Ojugbaye met Ajegemo, the original owner of Imesi, when he came to Imesi Ekiti. Imesi land does not transcend beyond the Imesi moat where Okun land is about 14 kilometers from Imesi moat. He stated further that the 2<sup>nd</sup> & 3<sup>rd</sup> defendants have no land in Okun and neither have they ever farmed on same. Finally, he said that Onimesi had no authority over Okun Community land.

Under cross-examination by Rotimi Adabembe, Esq he denied that Okun is a Quarter in Imesi Ekiti, that Olokun Osayinrotupin Oyo, the first Olokun met Onimesi of Imesi-Ekiti, oba Adegbite Iyaya on the throne. According to the claimant, when Okun indigenes came to Imesi Ekiti they settled at Idogun Quarters, Imesi Ekiti as their residential settlement while Onimesi gave them land at Isigun Quarters for farming purposes because Okun land was far away from Imesi Ekiti. He stated further thus:

***"Since my father joined his ancestors in 1939 no Olokun has been installed in Imesi Ekiti until I returned in year 2015 that I returned home. Our people were approached by the Onimesi Ekiti that we should present a candidate for the Olokun chieftaincy and my people replied to him formally inform us and Onimesi has no power to instal Olokun."***

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According to the claimant, Okun is a separate entity and Olokun can only be installed in Okun land and not Imesi Ekiti.

Under cross-examination by Temitope Kolawole, Esq, the claimant testified that late Oba Oladimeji the immediate past Onimesi of Imesi Ekiti never trespassed on Okun land. He further testified that it is the incumbent Onimesi of Imesi that is trespassing on the land in dispute while admitting that the 2<sup>nd</sup> and members of his Agunsoye Ruling House have never trespassed on Okun land. So also Omilodi Ruling House and its members. He alleged that the incumbent Onimesi of Imesi Ekiti collected royalties from his (i.e. claimant's) tenants and harassed them.

Upon the conclusion of the evidence of the claimant, Oluwasayo Fagbohun, Esq, formally closed the claimant's case.

DW1: BELLO OGUNBO (THE FIRST DEFENDANT) of Francis Camp, Ore/Royal family land, Imesi Ekiti adopted his written statement on oath deposed to on 14<sup>th</sup> November, 2022 as his evidence before this Honourable court. According to the first defendant, the claimant is a tenant to Onimesi of Imesi Ekiti as it was the reigning Onimesi at that time that allocated land to the claimant's progenitor when he came to settle with Imesi people. He testified further that he (first defendant) is a tenant on Ore farmland to Onimesi and not the claimant. He



denied having farmed on the land allocated to the claimant's family at Okun. He further testified that Oba Ojugbaye, the first Onimesi of Imesi, who migrated from Ile Ife acquired the entire land in Imesi Ekiti and settled there with his people. Onimesi of Imesi Ekiti allocated land to Okun people (i.e the claimant's family, Isigun people, Eri people, among others when they came to settle at Imesi Ekiti for farming purposes. He gave the boundaries of the farmland which was allocated to the claimant's family for family purposes as follows:-

- On the 1<sup>st</sup> side by the land of Eri farm which was demarcated by Aekeeke stream.
- On the 2<sup>nd</sup> side by an access road which demarcates Ore farm, property of the royal family and Oke land,
- On the 3<sup>rd</sup> side by Oyemo river which demarcates Okun farm
- And on the 4<sup>th</sup> side by Oyinmo River that serves as the boundary of Okun farm.

He also gave the boundaries of the land allocated to Oka people by the Onimesi of Imesi Ekiti as well as that of Ore farmland (i.e the royal family farmland).

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He denied the boundaries of the land in dispute as stated by the claimant and testified that Okun people (i.e the claimant) did not share boundary with Ose river.

According to the 1<sup>st</sup> defendant, the claimant has some tenants on the farmland allocated to him. They are, Aba paya, Aba Omolade, Aba Eli, Oke Ede, Aba Erusu Oke Bola, Odo Oro, Aba Ese, Aba Arigidi. He, however, denied that Aba Francis, Odo Oro, Aba Ese, Aba Arigidi are on Okun land but on the royal family land and it is the tenants therein and their people that reside in the Camps. He also gave the following camps which are occupied by the Oke people; Ilaloke/Oriokuta, Isakunmi, Iku 1 and Iku 2. That all the tenants in Ore farm paid tributes to Omo Owa through the Onimesi of Imesi Ekiti. He stated further that the 1<sup>st</sup> and 3<sup>rd</sup> defendants never laid any claim to the land allocated to the claimant's family by the Onimesi of Imesi Ekiti. He (i.e the first defendant) claimed to be a tenant to the royal family and not the claimant as he has been paying tribute to the former since he started working on the farm. Finally, he stated that Okun land is known to both parties, so also the royal family land.

Under cross-examination, by claimant's learned counsel, Taiwo Ogunmoroti, Esq, the 1<sup>st</sup> defendant claimed to be tenant to the Onimesi and not

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the claimant. He testified further that Imesi and Okun have no common boundaries. He testified further that Okun had no land.

Answering question from Temitope Kolawole, sq 2<sup>nd</sup> defendant learned counsel, that first defendant said that he did not know the 2<sup>nd</sup> defendant and he knew the claimant of recent. He testified further that during the reign of Oba Oladimeji, the immediate past Onimesi of Imesi Ekiti, there was no dispute over the disputed land.

DW2: HON PRINCE OLU OLADIMEJI (the 3<sup>rd</sup> defendant) of the palace of Onimesii of Imesi Ekiti adopted this written statement on oath deposed to on 14<sup>th</sup> day of December, 2022 as his evidence in chief before this Honourable court. According to him, the claimant is a tenant to Onimesi of Imesi Ekiti as it was the reigning Onimesi, Oba Obiyemi, the 21<sup>st</sup> Onimesi of Imesi Ekiti, that allocated the land in dispute to the claimant's progenitor and his people when they came to settle with Imesi people. Ore farmland belongs to the royal family absolutely and not to the claimant. That he (i.e the 3<sup>rd</sup> defendant) farmed in Ore farmland and he is a tenant to the royal family and not the claimant's family. His evidence in chief is in all material particular similar with the evidence in chief of the first defendant. There is no need reproducing them here. However, under cross- examination by the claimant's learned counsel, Taiwo Ogunmoroti, Esq the 3<sup>rd</sup> defendant



testified that Okun people came to Imesi Ekiti a very long time ago and settled on the land in dispute. He, however, did not know the boundaries of the land in dispute. He admitted that there are camps on the Okun people's land.

Under cross-examination by Temitope Kolawole, Esq the third defendant admitted that the claimant had been on the land in dispute for a very long time.

DW3: CHIEF GABRIEL ATERE OLOKA adopted his written statement on oath deposed to on 28<sup>th</sup> June, 2024 as his evidence before this Honourable Court. According to the DW3, he is the holder of the Oloka chieftaincy title in Imesi Ekiti. He described the claimant as the tenant to Onimesi of Imesi Ekiti who allocated land to the claimant's progenitor and other settler such as people from Oka, Isigun, Eri and others, who all came to Imesi Ekiti to join the Onimesi of Imesi Ekiti and other people, for agricultural purposes. He gave the boundaries of the land allocated to the claimant's progenitor to the Oka people while he described Ore farmland as the royal family land which the claimant is trying to claim along with Okun land as his own. He further testified that the 1<sup>st</sup> defendant who is a tenant on the royal family land had never laid claim of ownership to the farmland which belonged to the 2<sup>nd</sup> & 3<sup>rd</sup> defendants' families who are members of Omo-Owa.

Under cross-examination by Temitope Kolawole, Esq, the witness testified that it is not correct to say that Okun people are separate and distinct from Imesi



people. He further said that the claimant has his exclusive parcel of land in Imesi Ekiti. Answering questions from the claimant's learned counsel, Taiwo Ogunmoroti, Esq, the witness admitted that the claimant had tenants on his own parcel of land.

Upon the conclusion of the evidence of the DW3, Rotimi Adabembe, Esq formally closed the case of the 1<sup>st</sup> & 3<sup>rd</sup> defendants.

DW4; RTD SERGEANT FASUNLADE (the 2<sup>nd</sup> defendant) adopted his written statement on oath deposed to on 5<sup>th</sup> July 2022 as his evidence in chief. According to him, he is the head of Agunsoye Ruling House of Imesi Ekiti. He denied venturing into the claimant's land.

Under cross-examination by Rotimi Adabembe, Esq, representing the 1<sup>st</sup> & 3<sup>rd</sup> defendants, the 2<sup>nd</sup> defendant admitted that the founder of Imesi Ekiti is the Onimesi of Imesi Ekiti but he is not the founder of the land in Imesi Ekiti. He admitted that he had never visited the Okun farmland and did not know the land in dispute. He did not know the extent of the area of land that belongs to the Onimesi of Imesi Ekiti. Under cross-examination by claimant's learned counsel, the 2<sup>nd</sup> defendant claimed to be the head of both Agunsoye and Omiodi Ruling Houses of Imesi Ekiti.

Temitope Kolawole, Esq, at his stage, closed the case of the 2<sup>nd</sup> defendant.



Upon the conclusion of evidence of both parties, learned counsel were directed by this Honourable court to file and exchange their respective final written addresses. On 28<sup>th</sup> of May, 2025, they all adopted their respective Final Written Addresses. Thus, paving way for the delivery of this judgment.

In his final written Address, learned counsel for the 1<sup>st</sup> & 3<sup>rd</sup> defendants, Rotimi Adabembe, Esq, formulated three (3) issues for determination thus:-

- (i) ***Whether claimant has proved his case with regards to the evidence on record that would have entitled him to his claims before this Honourable court.***
- (ii) ***Whether order of forfeiture can be made against 1<sup>st</sup> defendant, who has not been proved and established as the customary tenant of the claimant in this case even with regards to evidence on record.***
- (iii) ***Whether claimant is entitled to order of injunction and damages given consideration to the evidence on record before this Honourable court.***

On issue No. 1, **whether the claimant has proved his case**, learned counsel submitted that in a land matter, the onus of proof usually lies on the plaintiff who must rely on the strength of his case and not on the weakness of the defence, relying on the case of TSY LTD NS NWACHUKWU (2024) 13 NWLR (pt 1954) 141



173-174 paras D-F. Learned counsel submitted that the claimant averred in his Amended Statement of Claim and led, evidence to that effect that Okun is a quarter in Imesi Ekiti and the claimant is the head of the Okun Qurters in Imesi Ekitii, meaning that the land upon which the Okun people settled formed part of Imesi Ekiti. That the claimant held the land in dispute in trust for Okun people while the 1<sup>st</sup> & 3<sup>rd</sup> defendants gave evidence that the land in dispute was given to the claimant's progenitor by the reigning Onimesi of Imesi Ekiti when the claimant's progenitor and his people migrated to and settle in Imesi Ekiti that it is also the evidence of the 1<sup>st</sup> & 3<sup>rd</sup> defendants that the entire land in Imesi Ekiti including the land in dispute was founded by Oba Ojugbaye, the first Onimesi of Imesi Ekiti. He submitted that the claimant had failed to establish with cogent evidence that the Okun land was founded by the claimant's progenitor. He submitted further that the evidence of the claimant and his witnesses are at variance with his pleadings with regards to the status of Okun Community while in their evidence the claimant and his witnesses admitted that Okun Community is located in Imesi Ekiti on one hand and in pleadings the claimant averred that Okun Community is a separate and distinct people from Imesi Ekiti. He submitted further that the evidence of the claimant and his witnesses are self-contradictory. He urged this Honourable court to hold that the claimant has failed to prove his



case before this Honourable court, calling in aid the case of **BONIFACE V ANYIKA CO (NIG) LTD & LROR (2006) 16 NWLR (pt 1003) 560** at p. 572 paras A-C. He urged this Honourable court to resolve this issue in favour of the 1<sup>st</sup> & 3<sup>rd</sup> defendant.

On issue NO 2, ***whether an order of forfeiture can be made against the 1<sup>st</sup> defendant who has not been proved and established as the customary tenant of the claimant***, learned counsel submitted that there is no evidence on record of customary tenancy adduced by the claimant in proof of this. He found judicial support in the case of **BABATUNDE V. AKINTADE (2006) 6 NWLR (pt 975) 44** at p61, paras E-F, wherein the Court of Appeal held thus:-

***The main incident of a customary tenant is that the customary tenant pays tribute to the overlord and he enjoys his holding in perpetuity subject to good behaviour. In the instant case, there was no evidence that the appellants or their predecessors in title ever recognized the respondent or their predecessors as their overlords***" See also **MAKINDE V. AKINWALE (2000) 2 NWLR (pt 645) 435**. He urged this Honourable court to dismiss leg 18 (b) and (c) of the Amended Statement of Claim, same, having not been supported by evidence. Similarly, on forfeiture learned counsel submitted that the question of forfeiture does not arise since that is no evidence of customary tenancy between the two



parties, relying on the case of IROAGBARA V. UFOMADU (2009) 11 NWLR (pt 153) 587 at 601 para H, P 603 paras B-C where the Supreme Court held thus:-

***"Where there is no evidence of customary tenancy between two parties, the question of the forfeiture does not arise, in the instant case, PW3 called by the appellant testified to the fact that the respondent was not a customary tenant of the appellant and never paid tribute thereto and that the respondent was given the land in dispute as a gift by the predecessor in title of the appellant.***

Finally, learned counsel submitted that since the claimant had failed to prove his title and ownership to the Ore farmland of Onimesi Ekiti, with convincing evidence the order of forfeiture cannot be made against the 1<sup>st</sup> defendant, relying on the case of ELEGUSHI V. OSENI (2005) 14 NWLR (pt 945) 348 at 347, para B wherein the Supreme Court held thus:-

***"A claimant must prove ownership of the land in dispute to be entitled to a relief for forfeiture of customary tenancy."***

He urged this Honourable court to hold that the claimant had failed to establish his title to the land upon which the 1<sup>st</sup> defendant has been recognized as the tenant of Onimesi of Imesi Ekiti and is thus not entitled to the order of forfeiture of the tenancy of the first defendant.



On issue No. 3, ***whether claimant is entitled to order of injunction and damages given consideration to the evidence on record before this Honourable court***, learned counsel submitted that the claimant, having failed to prove his claims before this Honourable court, all supporting reliefs such as the one for injunction and damages must fail and fall like pack of cards placing reliance on the case of MUJAID V. IBEDC (2021) 12 NWLR (pt 1791) 537 at 564 paras A-e. He further submitted that the claimant had failed to give credible evidence as to the extent of the land being claimed before this court.

Claimant must identify the land in dispute with certainty, calling in aid the cases DABUB V. KOLO (1993) 9 NWLR (pt 317) 254 (SC); ACB LTD V. AWOGBORO (1996) 3 NWLR (pt 347) 383 SC.

He urged this Honourable court to resolve this issue in favour of the 1<sup>st</sup> & 3<sup>rd</sup> defendants.

Learned counsel for the 2<sup>nd</sup> defendant, Temitope Kolawole, Esq, formulated a sole issue in his final written address thus:-

***"Whether the 2<sup>nd</sup> defendant is liable to the claimant's claim going by the fact and evidence on record."***

Learned counsel submitted that the alleged involvement of the 2<sup>nd</sup> defendant was never proved by the claimant in the instant case as none of the



claimant's witnesses mentioned the name of the 2<sup>nd</sup> defendant specifically challenging the claimant's peaceful or quiet enjoyment of his Okun land. He prayed this Honourable court" ***to absolve the 2<sup>nd</sup> defendant of any liability arising from the claimant's claim or strike out the 2<sup>nd</sup> defendant's name from this case, having been sued in error and without no (Sic) direct link to the claim of the claimant....."***

In response to the Final written Addresses of the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> defendants, Taiwo Ogunmoroti, Esq formulated a sole issue for determination thus:-

***"Whether from the facts and available evidence on record, the claimant has proved or established his title to the land in dispute as to entitle him to the reliefs sought from this Honourable court"***

Learned counsel highlighted the five ways of proving title to land as laid down in the case of IDUNDUN V. OKUMAGBA (1976) 9110 SC 227 and followed by AJIBULU V. AJAYI (2004) 11 NWLR (pt 885) 458 at 474 A-F; (pt 998) 628; at 652 A-D; MBAN V. BOSI (2006) 11 NWLR (pt 991) 400 at 412 paras D-H; ADELAKUN V. ISE OGBEKUN (2003) 7 NWLR (PT 89) 295 at 310 paras D-G;

Learned counsel submitted that the claimant proved by credible evidence as follows:-





- (i) That he and his Okun Community are the bonafide owners of the land in dispute.
- (ii) The land in dispute had been in possession of the claimant and his progenitors from time immemorial who held the land in trust for the Okun Community.
- (iii) The land in dispute is well known to the parties.
- (iv) Claimant and his Okun people have both good and cash crops on the land;
- (v) Claimant and his Okun Community have tenants on the land in dispute which tenants are from various towns and villages, including Oka, Arigidi, Iku, Okeagbe, Ikere Akoko, Erusu Akoko etc
- (vi) The tenants pay tribute to claimant and his Okun Community.
- (vii) The defendants are now laying spurious claim to the land which claimant and his Okun Community did not consent to, approved, or authorize.

He submitted further that the defendants did not cross-examine the claimant and his witnesses on the above established facts which, according to learned counsel, is tantamount to admission, relying on the case of OGBONNA V.

OGBUJI (2014) 6 NWLR (pt 1403) 205 at 234 paras. A-F.



Learned counsel submitted further that a defendant who had no counter-claim had no burden to prove but where the case of the defendant supports that of a claimant, the claimant can exploit the weakness in the defendant's case even though the law says that the claimant must rely on the strength of his case, calling in aid the case of SOKWO V. KPONGBO (2003)2NWLR (pt 1803) 111 at 151-152 paras H-A; and OLUSANYA V. OGUNEYE (2001) 13 NWLR (pt 730) 298 at 330 paras B-F.

Learned counsel further submitted that by virtue of para 12 (g) of the 1<sup>st</sup> & 3<sup>rd</sup> defendant's Amended Statement of defence, the 1<sup>st</sup> & 3<sup>rd</sup> defendants conceded that the claimant had tenants on the land, meaning that the claimant and his community are the landlord of those tenants and are definitely owners of the land in dispute. Hence, they are entitled to the declaration sought in respect of the land in dispute.

Learned counsel submitted that the evidence of the 2<sup>nd</sup> defendant, under cross-examination, to the effect that Onimesi of Imesi Ekiti founded Imesi Ekiti but not the founder of the land in dispute, according to learned counsel, is an admission against the interest of the defendants and he urged this Honourable court to so hold; relying on the case of ONISAODU V. ELEWUJU (2006) 13 NWLR (pt 998) 517 at 529-532 paras G-C.



Finally, he urged this Honourable court to grant the claim of the claimant.

#### ISSUES FOR DETERMINATION

I have carefully reviewed the evidence of the parties in the case as well as the respective final written Addresses of learned counsel, and I am of the humble view that two issues call for determination in this case. they are:-

***"(1) Whether the claimant has a reasonable cause of action against the 2<sup>nd</sup> defendant.***

***(2) Whether, on the state of pleadings and the evidence led by both parties, the claimant has proved his case to entitle him to the reliefs being sought from this Honourable court.***

#### RESOLUTION OF THE ISSUES

ISSUES NO 1; The 2<sup>nd</sup> defendant's learned counsel in his Final Written Address has argued, albeit erroneously, that the claimant had no cause of action against the 2<sup>nd</sup> defendant. He prayed this Honourable Court to strike out or dismiss the claimant's suit on this ground. In RINCO CONSTRUCTION CO. LTD V. VEEPEEE IND. LTD (2005) LPELR – 2949 (SC) P. 14 PARAS E – G, the Supreme Court defined a reasonable cause of action thus:-

***"Reasonable cause of action means a cause of action with some chances of success for a statement of claim to disclose a reasonable cause of action it***



***must set out the legal rights of the plaintiff and the obligation of the defendant. It must then go on to set out the facts constituting infraction of the plaintiff's legal right or failure of the defendant to fulfill his obligations in such a way that if there is no proper defence the plaintiff will succeed in the relief or remedy he seeks."***

In determining whether a claimant has a cause of action against the defendant the court will look at the averments in the statement of claim. In IBRAHIM V. OSIM (1988) LPELR – 1403 (SC) p. 16; paras C – F, the Supreme Court pronounced thus:-

***"I think "reasonable cause of action" means a cause of action, when "as required by paragraph 2 of the rule only the allegations in the pleadings are considered if when allegations are examined, it is found that the alleged cause of action is certain to fail the statement of claim should be struck out."***

In OGBIMI V. OLOLO & ORS (1993) LPELR – 2280 (SC) p. 12, paras B – C, the Supreme Court held thus:-

***"To determine whether a plaintiff's claim discloses a cause of action suitable to be tried, it is necessary only to have regard to the claim of the***



***plaintiff which alone determines whether the claim brought before the court is justiciable."***

This will now take me to the averments in the Amended Statement of Claim. Paragraphs 13, 14, 16, 17 & 18(a) (d) read thus:-

***"13 Recently, the defendants began to lay spurious claim to the claimant's land whereas they are not the owners of the land as they have no connection with same.***

***14. Sometime in 2018 the then Onimesi Oba Adeyeye representing the 2<sup>nd</sup> & 3<sup>rd</sup> defendants' ruling Houses claimed that the Okun land belongs to him as the prescribed authority of Imesi Ekiti.***

***(a) The claimant denied above Onimesi claim because;***

- (i) The Onimesi has no land in Okun Community,***
- (ii) The defendants have no land in Okun Community***
- (iii) Okun Community is not a Royal land.***

***15 .....***

***16 The claimant will contend at the trial of this suit that the defendants acts and omissions plus their wrongful claim to claimant's Okun***



**community land are unlawful, illegal, irregular, invalid, ultra vires and unconstitutional.**

**17 Save and except by the Order of this Honourable Court restraining the defendants, the defendants will permanently alienate the claimant's Okun Community land and deprive the claimant and his community of the enjoyment of same.**

**18 Where of the claimant claims against the defendants as follows:-**

**(a) A declaration that the piece of land lying being and situate at Okun with the following boundaries namely; (i) Oyimo River by the East (ii) Aekeeke Street in the North (iii) Oka Community land in the South and Ose River in the West is the property of the claimant's Okun Community and as such entitled to the Customary Right of Occupancy of the said land."**

**(b) .....**

**(c) .....**

**(d) An order of permanent or perpetual injunction restraining the defendants their agents, servants assigns and privies from laying claim**





**to claimant's Okun community land with the following boundaries namely;**

- (i) Oyimo river by the East (ii) Aekeeke Street in the North;  
(iii) Oka community land in the South and (iv) Ose River in the  
West now, forthwith and hence forth.**

**(e) The sum of N50,000,000.00 (Fifty Million Naira damages against  
defendants being compensation for defendants' conduct or claimant's  
land described above."**

The claimant's allegations against the 2<sup>nd</sup> defendant together with other  
defendants are:

- (i) Laying spurious claims over his inherited land i.e the land in dispute.  
(ii) Defendant's acts and omissions  
(iii) Intention to deprive the claimant of his land permanently. Hence the  
claims for damages and perpetual injunction against the 2<sup>nd</sup> defendant  
and others. It is on record that the 2<sup>nd</sup> defendant was sued by the  
claimant in a representative capacity, representing Agunsoye Ruling  
house of Imesi Ekiti.

From the above mentioned averments in the Amended Statement of



claim, can it be properly said that the claimant has no reasonable cause of action against the 2<sup>nd</sup> defendant? My answer is "NO". The alleged acts or omissions of the 2<sup>nd</sup> defendant in conjunction with other defendants give the claimant a right of action against the 2<sup>nd</sup> defendant. Whether the claimant will succeed or not is a different ball game. So long as the Amended Statement of Claim discloses some cause of action or raises some question fit to be decided by this Honourable Court, the claimant has a cause of actions against the 2<sup>nd</sup> defendants. The mere fact that a case is weak, and not likely to succeed, is no ground for striking it out or dismissing it. See: YUSUF & Ors V. AKINDIPE & ORS (2000) LPELR – 3532 (SC) p. 13 paras D – E See also THOMAS & ORS V. OLUFOSOYE (SC) p. 24 paras E – G.

The 2<sup>nd</sup> defendant's learned counsel, Temitope Kolawole, Esq has lost sight of the fact that the claimant, among other relief is seeking for a declaratory relief against the 2<sup>nd</sup> defendant of which he is entitled to seek even without any cause of action. It is trite law that a declaratory relief, could be sought where there is no cause of action See: ADU V. GBADAMOSI (2009) 19 WRN 178 at p. 194 lines 20 – 25; ODUAGBO V. ABU (2001) 14 NWLR (pt 732) 45 at 111 – 112 paras H – E; IKINE V. ADJERODE (2001) 18 NWLR page 745, 446 page 482 para F and A.G. KADUNA STATE V. HASSAN (1985) 2 NWLR (pt 8) 483 at 497 paras C – D.



In summary, I hold that the claimant has a cause of action against the 2<sup>nd</sup> defendant. I resolve this issue in favour of the claimant and against the 2<sup>nd</sup> defendant.

On ISSUE NO 2, whether on the state of pleadings and the evidence led by both parties, the claimant has proved his case to entitle him to the reliefs being sought from this Honourable Court, it is on record that the claimant is seeking for a declaration of title to land, among other reliefs. The position of the law is well settled beyond per adventure that the claimant who sought for a declaratory relief must prove and succeed on the strength of his case and not rely on the weakness of the defence. It is not granted in default or even on admission by the defendant. See: YUSUF V. NONYELUM (2025) LPELR – 81467 (CA) pp 24 – 26, paras D – B; the burden of proof on the claimant in the instant case, who sought for a declaratory relief is quite heavy in the sense that declaratory reliefs are not granted even on admission where claimant fails to establish his entitlement to the declaration by his own evidence. See: EMENIKE V. PDP (2012) 50 NSCQR 94 at 130. The court has discretion to grant or refuse a declaratory relief and its success depends entirely on the strength of the claimant's case and not on the defence. Therefore, it is immaterial or not that the defendant did not controvert the pleadings or call evidence to support his case. See: SAKU & ANOR V. NJIDDAH



(2018) LPELR – 44483 (CA) YUSUF V. MAIKANANANZIR (2013) LPELR – 22617 (CA).

He who seeks for a declaration of title to land as the claimant did in this case, bears the burden of proving his case on the strength of his own case and not to rely on the weakness of the defendant. See: I.B.N. V. ATLANTIC TEXTILES MANUFACTURING CO. LTD (1996) LPELR – 1518 (SC). In the instant case, it is the duty of the claimant to prove how he derived title to the parcel of land, lying, being and situate at Okun which is bounded as follows:-

- (i) OYIMO river by the East;
- (ii) Aekeeke Street in the North,
- (iii) Oka Community land in the South and
- (iv) Ose River in the West See: JOLASUN V. BAMGBOYE (2010) 18 NWLR (pt 1225) 285 – wherein the Supreme Court stated thus:-

***“The ways of proving title to land are:***

***(a) proof by traditional history or evidence of tradition,***

***(b) proof by grant or the production of documents of title***

***(c) proof by acts of ownership extending over a sufficient length of time***

***numerous and positive enough to warrant the interference that the***

***person exercising such acts is the owner of the land;***





***(d) proof by possession of connected and adjacent lands in circumstances rendering it probable that the owner of such lands would in addition, be the owner of the land in dispute."***

See also: FAGUNWA V. ADIBI (2004) 17 NWLR (pt 903) 544 ANUKAM V.

ANUKAM (2008) 5 NWLR (pt 1081) 455; ONISAODU V. ELEWUJU (2006) 13 NWLR (pt 998) 517; AJIBOYE V. ISHOLA (2006) 13 NWLR (pt 998) 628.

From the above principles and judicial precedents, I must state that the court of law is not a father Christmas who goes on dashing declaratory reliefs without the claimant discharging its burden by adducing convincing evidence simply because the defendant's case is weak.

In paragraphs 2 & 15 of the Amended Statement of Claim, the claimant averred thus:-

***"(2) the 1<sup>st</sup> defendant is a tenant of the claimant aided resides at Aba Francis Imesi Ekiti.***

***(15) The 1<sup>st</sup> defendant who is a tenant of the claimant is laying spurious claim to claimant's Okun community land illegally aided by the 2<sup>nd</sup> & 3<sup>rd</sup> defendants.***

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The above quoted averments are suggestive of the facts that the 1<sup>st</sup> defendant is a tenant of the claimant and is in possession of the land in dispute or part thereof. Secondly, that the 1<sup>st</sup> defendant is on the disputed land lawfully. Strangely, the claimant is seeking for fifty Million damages against the 1<sup>st</sup> defendant and his co – defendants being compensation for defendants' conduct on claimant's land. The claims of the claimant in the instant case are contradictory and self-defeating. In HASSAN V. AMINU (2002) 22 WRN 131 (CA) p 146 lines 5 – 15 the Court of Appeal held thus:-

***"The award of damage in a claim for forfeiture is indeed contradictory as the claim suggests that the respondents initial entry was lawful; Kenrow (Nig) Ltd V. Denmiss Moss (1987) 4 NWLR (pt 65) 362 at 377 – 378; OKE V. AYEDUN (1986) 2 NWLR (pt 23) 548 at 566."***

Another angle this Honourable Court would look at the claim of the claimant for a declaration of title is the fact that the defendant, by paragraphs 2 & 15 of the amended Statement of claim, is in law in possession of the land in dispute. It is trite law that party who desires to dislodge another who is in possession has to show better title. Thus; where the defendant in an action for declaration of title is in possession, even though adverse, the burden is cast on



the claimant to prove that the defendant is not the owner of the land in dispute. If the title of the claimant out of possession is established, the defendant in possession can only successfully resist the claim if he shows a better title or better right of possession. In such a case, title having been established, the onus will shift to the defendant in possession to show a better title or better right of possession. See: EMMANUEL A. ADENIRAN V. EMMANUEL ALAO "(1992) 2 NWLR (pt 223) 350 page 371.

In the instant case, the 1<sup>st</sup> defendant averred that he is not a tenant to the claimant but a tenant on Ore land which belonged absolutely to the royal family. He averred that it was Oba Ola Obiyemi, the 21<sup>st</sup> Onimesi of Imesi Ekiti, that allocated the land in dispute to the claimant's progenitor and his people. He also averred that Oba Ojugbaye the 1<sup>st</sup> Onimesi of Imesi Ekiti that acquired the entire land in Imesi Ekiti.

Claimant while admitting that his progenitor and his people met Onimesi of Imesi Ekiti in Imesi-Ekiti and that Okun community is a Quarter in Imesi Ekiti, he however, in his evidence before this Honourable Court said that Okun community is different and separate from Imesi Ekiti. Under cross – examination by Rotimi Adabembe, Esq, the claimant said thus:-

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***"It is not correct to say that Okun is a quarter in Imesi Ekiti. Okun migrated from Ile-Ife and settled at Okun land far away from Imesi Ekiti.***

***.....Okun land was far away from Imesi Ekiti about 12 kilometres."***

For the claimant to succeed in this case and rebut the presumption that the 1<sup>st</sup> defendant who in possession of the land in dispute, he (i.e the claimant) must prove to the satisfaction of thi Honourable Court that the 1<sup>st</sup> defendant is in occupation of the land in dispute by virtue of the customary tenancy granted him by the claimant. The Supreme court in WAHAB ALAMU V. SAPO & ANOR V. ALHAJI BINTA SUNMONU (2010) 11 NWLR had this to say on presumption by possession as proof of title:-

***"As now settled, proof of ownership is prima facie proof of possession, the presumption being that the person having title to the land in dispute is in possession."***

See also APATA V. OLANLOKUN (2013) 56 (pt 2) NSCQR 801 at 830.

According to the claimant, the 1<sup>st</sup> defendant is his tenant on the land in dispute. On what constitutes customary tenancy under customary law, according to the Court of Appeal in AMEH V. AMEH (2011) 8 WRN 85 at p 104 lines 20 – 30,



a customary tenancy involves the transfer of an interest in land from customary landlords or overlords to the customary tenant and which interest entitle the tenant to exclusive possession of the land and which interest, subject to good behavior, he holds in perpetuity. Therefore, unless it is otherwise excluded the main feature of a customary tenancy is the payment of tributes by the customary tenant to the overlord. See also *DAMULAK DASHI & ORS V. STEPHEN DATLONG & ANOR* (2009) 1 scm 17 at 27.

In the instant case, the claimant did not plead specifically any material fact relating to payment of tributes by the 1<sup>st</sup> defendant. In paragraph 12 of the Amended Statement of claim, the claimant averred thus:-

***12. The tenants on claimant's land pay tributes, royalties or isakole annually including yam tubers, palm oil, palm wine, antelope, and money. Documents evidencing some of the transactions between the claimants and these defendants are pleaded and will be relied upon at the trial of this suit.***

Sadly, the claimant did not tender any document in this case in evidence in proof of this fact. The claimant's act in this regard is tantamount to withholding of evidence. Section 167 (d) of the Evidence Act provides thus:





***"The court may presume the existence of any fact which it deems likely to have happened, regard shall be had to the common course of natural events, human conduct and public and private business, in their relationship to the facts of the particular case, and in particular the court may presume that:-***

***a. ....***

***b. ....***

***c. ....***

***d. Evidence which could be and is not produced would if produced be unfavourable to the person who withholds it and***

***e. ....***

See: SIMON V. STATE (2017) LPELR – 41988 (SC) p. 11, paras E – F. PPA V.

PDP & ORS (2009) LPELR – 4865 (CA) p. 56 paras A – D; BAMGBOSE V. UNILORIN (1999) 10 NWLR (pt 622) 290.

I hold that if the purported transactions between the claimant and the defendant which could be produced before this honourable Court by the claimant who ought to have produced them, if produced, would be unfavourable to the claimant.

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According to the claimant the 1<sup>st</sup> defendant his tenant and resides at Aba Francis, Imesi Ekiti. Aba Francis is one of the camps purportedly owned by the claimant. None of the (5) five witnesses called by the claimant farms at Aba Francis or is a co – tenant to the 1<sup>st</sup> defendant. CW1 farms at Aba Oke Ode. CW3 has his farm at Aba Papa, CW4 has his farmland at Aba Eli while CW5 who is from Idosere Quarters has no farm at Okun land. It behoves the claimant to have called one of “his tenants” if any, at Aba Francis to give evidence in this case. A claimant’s tenant at Aba Francis is a vital witness whose evidence may determine the relationship between the claimant and the 1<sup>st</sup> defendant one way or the other. See: GUBLA V. LAWUYI & ORS (2019) LPELR – 48391 (CA) p 63; paras B – F. The failure on the part of the claimant in the instant case is detrimental to the case of the claimant. I so hold.

It is laughable and contradictory for the claimant to seek for a declaration of title, forfeiture of customary tenancy, damages and perpetual injunction all in this suit against the defendants, particularly the 1<sup>st</sup> defendant whom the claimant described as his customary tenant. The claimant’s claims are mutually contradictory. In NWAOKORO V. EGBE NOMA (1997) 11 NWLR (pt 528) 238 at pp 247 – 248 the Court of Appeal had this to say:-

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*"I have carefully considered the two arguments canvassed above; and must agree with the submission of learned counsel for the appellants that under our law, a party cannot be sued both as a trespasser and a customary tenant and made liable in damages and also to forfeiture of the customary tenancy, all in the same suit. It must be either one or the other. See: the case of AROMIRE V. AWOYEMI (1972) 2 SC. This court had the opportunity of considering the same issue in the recent case of OKPALA V. OKPU (1996) 8 NWLR (pt 468) 589 (coram: Akpabo Akintan and Ige J.J.C.A.) In that case, respondents had sued the appellants at the Delta State High Court claiming for:- forfeiture of the defendant's interest in the land in dispute, which the plaintiffs granted to them as customary tenants (2) the sum of N10,000.00 as special and general damages for trespass.*

*(3) possession of the land (4) perpetual injunction.*

It is trite law that a plaintiff cannot sue a defendant for both forfeiture of customary tenancy and for damages or trespass all in the same suit. This is because the two claims are mutually contradictory. Therefore, where it is conceded that the defendants were customary tenants of the plaintiffs but later refused to pay customary tributes or rents, the correct claims the plaintiff should

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make are a declaration for title and forfeiture of the customary tenancy. It should not be a claim for damages and injunction. Where the court orders a declaration of title and possession they have the same effect as forfeiture of tenancy. In the instant case, the respondents' claims at the trial court are contradictory. *Adeleke V. Adewusi* (1961) 1 SCNCR 58; *EKWERE V. IYIEGBU* (1972) 6 SC 116; *AKINKUOWO V. FAFIMOJU* (1965) NMCR 349 p 596 paras E – G.

The Supreme court in *EKWERE V. IYIEGBU* (1972) LPELR – 1102 (SC) pp 16 – 17, paras B – D, had this to say:-

*“The real questions for determination in the appeal are two fold, namely: whether having admitted that the defendants/appellants used to farm on the land in dispute with their permission, the plaintiffs/respondents could maintain claims for trespass and injunction and whether they had failed to prove the eastern boundary of their land and if so what effect this failure should have on their claim.*

*It is trite law that in order to succeed in a claim for trespass a plaintiff must prove that he is in actual possession of the land in dispute. See: Oluwi V. Eniola (1967) N.M.C.R. p. 339 at 340; Banjo V. Fasanya S.C 315/1967 delivered on 3<sup>rd</sup> July, 1970 and Lawal V. Adeola S.C. 187/1967 delivered 25<sup>th</sup> September,*



**1970. Therefore, if a plaintiff is not in possession then he cannot succeed in a claim for trespass. (See: Sanni V. Oki S.C. 199/1968 delivered on 26<sup>th</sup> March, 1971). This is because the person who brings an action for trespass is one whose possession has been disturbed. See: Aremu B. Akanji SC 86/1970 delivered on 29<sup>th</sup> October, 1970. In the instant case, the 2<sup>nd</sup> plaintiff admitted that the defendants/appellants used to farm on the land and refused to pay them tribute and that it was because of this refusal that they had brought the present action. This admission, if properly evaluated should have left the learned trial judge in no doubt that the plaintiffs/respondents were their customary tenants who had refused to pay the customary tribute. If this was the case, we do not see how they could be liable in trespass. As a matter of fact the learned trial judge himself found that the defendants/applicants used the land in dispute but with the permission of the plaintiffs/respondents. Learned counsel for defendants/appellants correctly stated the position when he observed that the proper claim in such circumstances should have been for forfeiture. For these reasons, we think the learned trial judge was in error in granting for trespass and injunction."**

In ABIOYE V. YAKUBU (1991) 5 NWLR (pt190) 130 at 246, the Supreme Court held that an action for a declaration of title is an inappropriate remedy



against an erring customary tenant in possession. See also SALAMI V. OKE (1987) 4 NWLR (pt 63).

The claimant, in paragraphs 13, 14 & 15 of the Amended Statement of Claim, averred that the defendants began to lay spurious claim to the claimant's land and specifically in the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are illegally aiding the 1<sup>st</sup> defendant in this act. He went further in paragraph 16 of the Amended Statement of Claim to describe the defendants' acts and omissions as unlawful, irregular, wrongful, invalid and unconstitutional. In their evidence before this Honourable Court, claimant and his witnesses gave contradictory and not only that but is also at variance with the claimant's pleadings. According to the CW1, while answering questions from the 2<sup>nd</sup> defendant's learned counsel under cross-examination said thus:-

*"I know the 2<sup>nd</sup> defendant and his family at Imesi Ekiti. He is one of the trespassers on the land. He has challenged us on the land, claiming that the land in dispute belonged to him but we always responded that the land belonged to Olokun. I don't know what the 2<sup>nd</sup> defendant is claiming on the land in dispute the dispute is between Baba Olokun and himself (i.e the 2<sup>nd</sup> defendant)."*

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CW2 gave a contradictory evidence when he said that the 2<sup>nd</sup> defendant is not one of the trespassers on the land in dispute under cross – examination by Temitope Kolawole, Esq, representing the 2<sup>nd</sup> defendant.

Similarly, CW3, under cross – examination by Temitope Kolawole, Esq, testified that he had never seen 2<sup>nd</sup> defendant encroaching on the land in dispute. Hear him:

***"I have never seen the 2<sup>nd</sup> defendant encroaching on the land in dispute."***

CW4 had this to say under cross examination by Temitope Kolawole, Esq:-

***"I know the 2<sup>nd</sup> defendant in this case. He is not one of the people disturbing us on the land in dispute."***

Again CW5 absolved the 2<sup>nd</sup> defendant of claiming ownership of the disputed land. Hear him:-

***"The 2<sup>nd</sup> defendant is not claiming ownership of the disputed land. The 2<sup>nd</sup> defendant has its own family land."***

In contradiction of what the CW2, CW3, CW4 & CW5 said, the claimant who alleged that the 2<sup>nd</sup> & 3<sup>rd</sup> defendants are illegally laying spurious claim of ownership over the disputed land had this to say:-

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***"I admit that I sued the 2<sup>nd</sup> and 3<sup>rd</sup> defendants because Onimesi was trespassing on our Okun land.***

***..... the incumbent Onimesi is the one trespassing on our land. I admit that the 2<sup>nd</sup> defendant retired Sergeant Fosulade has not trespassed on the land in dispute personally. .... I repeat that Onimesi is the one trespassing on my land and collecting royalties from my tenants. He is harassing them."***

It is trite law that any piece of evidence led by a party and his witnesses which is an variance with his pleadings goes to no issue and must be rejected by the court. See: APENA & ANOR V. ALERU & ANOR (2014) LPELR – 23305 (SC) p. 20, paras B – F.

The above quoted pieces of the evidence of the claimant and his witnesses go to no issue. However, they are tantamount to an admission against interest. It is the case of the defendants that they did not trespass on the claimant's purported land. Claimant expressly stated that it was Onimesi, the traditional ruler of Imesi Ekiti, that was trespassing on his land and collecting royalties from his tenant. In paragraphs 13 (e) and (f), the 1<sup>st</sup> and 3<sup>rd</sup> defendants specifically denied ever trespassing on the claimant's land and have no intention to trespass



ate or deprive the claimant's family of the enjoyment of the land allocated to by the Onimesi. The evidence of the claimant to the effect that it is Onimesi nesi that is trespassing on his land and collecting tributes from his tenant is an mission against the interest of the claimant. More importantly, all the itnesses called by the claimant except the CW1 admitted that the 2<sup>nd</sup> defendant did not trespass on the claimant's land. All these pieces of evidence contradict the claim of the claimant that the defendants are laying spurious claim of ownership over his land. In KAMALI & ORS V. UMUNNA & ORS (1997) LPELR – 1657 (SC) p. 27 paras C – F, on the effect where a party makes an admission against his interest.

Where there are admissions by a party against his interest such admissions will be admissible against the person AJIDE V. KELANI (1985) 3 NWLR (pt 12) 248 260; S. 20 (3) (a) Evidence Act. This is not to say, however, that admission per se is conclusive proof of the Entire mater in litigation, but it stands firmly on the subject of the admission against the person making it. Also it must be reviewed in relation to the entire evidence before the court to know the weight to attach to it. OJIEGBE & ORS V. OKORARANYA & Ors (1962) 2 SCNCR 358; (1962) 1 ALL NLR 606 NWANKWO V. NWANKWO (1995) 5 NWLR (pt 394) 153, 171 Seismograph Services (Nig) Ltd V. Eyuafe (1976) 9 – 10 SC 135."



Similarly, in ADBULLAHI V. FRN (2025) LPELR – 80704 (CA) p. 13 paras B – C  
he Court of Appeal held thus:-

***“After all, a court cannot ignore the evidence of a person against his own interest as it is relevant and admissible evidence. See NWACHUKWU V. STATE (2002) 7 SC (pt1) 124 and AKANINWO & ORS V. NSIRIM & ORS (2008) 1 SC (pt 111) 15.***

I find as a fact that the defendants have neither trespassed on the claimant’s land nor laid spurious claim of ownership over same.

I am not done yet on the evidence of the claimant and his witnesses. It can best be described as contradictory evidence. The pieces of evidence adduced by the claimant and his witnesses are logically opposite, contradicting, and inconsistent. It is trite that where the evidence of the witnesses of one party, as happened in this case of the claimant is contradictory on the relevant issue of claim of ownership and trespass, the claimant’s case should fail. See:- EBOADE & ANOR V. ATOMESIN & ANOR (1997) LPELR – 989 (SC) p. 25 paras E – F. I pronounce that this claimant’s case was dead on arrival and it deserved a decent burial.

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I have come to the conclusion of this judgment. The claimant has failed woefully to prove his entitlement to the reliefs being sought from this Honourable Court. I resolve the ISSUE NO. 2 in favour of the defendants and against the claimant.

The entire suit of the claimant is accordingly dismissed.

I award costs of N1 Million each in favour of the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> defendants and against the claimant.



Hon. Justice E.B. Omotoso  
Judge.

19<sup>th</sup> of August, 2025.

**Appearances:**

- Taiwo Ogunmoroti, Esq, for the claimant.
- Rotimi Adabembe, Esq, for the 1<sup>st</sup> & 3<sup>rd</sup> defendants.
- Temitope Kolawole, Esq, for the 2<sup>nd</sup> defendant.

