SUSTAINING A CLAIM OR COUNTERCLAIM FOR A DECLARATION OF TITLE TO LAND: A REVIEW OF *DAVID NWANKWO EGEMONYE V PETER OBICHUKWU EGEMONYE*[1]*

Abstract

Where a court makes a declaration of title to land after hearing the parties in a suit, it means that the court has resolved all the issues and differences between the parties and concludes from the evidence before the court and the circumstances of the case that one out of the parties is entitled to the title. Such finding or declaration of the court is final and conclusive and henceforth the person in favour of whom the declaration is made takes priority in respect of the property for which title has been declared above and against the other party who has the only option to appeal such a decision or take the outcome as it is. To secure an order for declaration of title to land is not an easy task. It is not a child's play. Much is expected from the plaintiff and the defendant where he has a counterclaim too. The requirements for establishing title are an issue of law and not a game of chess. A party who fails to present and satisfy the requirements will no doubt lose his case before the court and this is notwithstanding how eloquent or seasoned his counsel may be or how elegant the procedure that was adopted by court. The review of David Nwankwo Egemonye v Peter Obichukwu Egemonye (Suit No HN/133/2016) delivered by the Anambra State High Court sitting at Nnewi and presided over by Hon Justice N.L. Onyeka, is aimed at looking at the facts of the case, the evidence adduced by the parties and balance them in the scale of law and justice to find out whether the plaintiff satisfied the requirements of law in proving his claim to be entitled to declaration ordered in his favour by court and also to look at the case of defendant and assess the finding of court. In that regard to the effect that the counterclaim was not proved. The paper is also aimed at revisiting the ruling reserved and incorporated within the judgement over some objections made during trial with reference to the admissibility of certain documents. The review is also aimed at extracting the findings, conclusion and recommendations on way forward on the crucial question of declaration of title to land as an aid to modern practice in litigations over land in Nigeria.

Keywords: Title, Joint Ownership, Possession, Claim and Counterclaim, Admissibility, Electronic Evidence.

1. Introduction:

An action for declaration of title like any other civil claim must be proved by the party claiming it on the preponderance of evidence or on the balance of probability for him to be entitled to judgement from the honourable court. The court is not a Father Christmas and does not go outside the claim of parties nor does it grant a relief or reliefs not sought by a party in his claim and beyond the claim, any order made by court is void and will be set aside on appeal. For such action to be proper and valid all necessary conditions must be fulfilled and the court will assume jurisdiction to hear the case. Included in what the plaintiff must do is to take up a writ or file other originating processes and after necessary endorsements, same will be served on the defendant or defendants as case maybe. The claimant in filling the writ must not only ask himself questions as to whether there is a cause of action, if there is, is he the one affected by the cause of action, if the answer is in the affirmative, then he files the writ. The writ must be accompanied with necessary materials and with this taken care of, the defendant is given the opportunity to file his own processes, and the court goes into hearing of the matter and thereafter judgement is given. It is important to note that parties are bound by their pleadings and court does not look beyond the pleadings of the parties as they are the facts which establish the claim visa viz the evidence of parties. In the case reviewed, plaintiff took up the action against the defendant who trespassed into his land and started occupation without his consent. At the time of entry by defendant, plaintiff who resides in Burkina Faso was out of Nigeria and upon his visit home in 2006, he discovered the act of defendant but owing to intervention of their brothers who pleaded on plaintiff to allow defendant stay in the premises as he had no other place to rest his head, the plaintiff for peace and out of brotherly feeling allowed defendant to live there. At no time then did defendant ever claimed or purported that the land and the house on it were jointly owned rather he was begging and pleading on plaintiff to grant him permission to rest his head with members of his family. This brotherly request and acceptance is one mistake that brought the parties before the court as the defendant abused the privilege given to him and thereafter started laying claim of joint ownership of the land in dispute and the house on it with the plaintiff as replicated in his counterclaim. Plaintiff's claim and defendant's counterclaim are two separate actions, the court heard both of them and came up with a decision in March 2020. This paper highlights the expectations of the parties to sustain their respective claims and the duty of court to place their evidence on a scale and come to the justice of the matter. Did the parties discharge their duties, and if they did, to what extent did court do its part.

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2. Definition of Conceptual Terms:

Title
Legally speaking title to land means the interest or right which a person has in a piece of land[2]. It also refers to the right, claim which a person has over a piece of land and this right, claim or interest supercedes any other right made by any other person in the said land[3].

Ownership:
Ownership is the right of exclusive use of property[4]. When a person owns a property including land, such a person has and exercises absolute right over the property concerned more than and above any other person or group of persons. Ownership is a good root of title. It signifies a title to a subject matter whether movable or immovable and such title is good against the whole world. In line with Roman Principle of Dominion ownership means absolute right or interest that exists on land[5]. Ownership is the most comprehensive and complete relation that can exist in respect of anything. It implies the fullest amplitude of rights of enjoyment, management and disposal over property. To put it the other way round, it implies that owner's title to these rights is superior and paramount over any right that may exist in the land in favour of other persons. Owner's right to enjoyment, management and disposal of the land does not depend upon nor is it subordinate to that of any other person[6]. In summary, ownership is the totality or the bundle of rights which a person has over a piece of land and the rights itself is exclusive and not subordinate to any other right claimable by any person in respect of the piece of land. The right of the owner therefore is not subject to right of another person including right of alienation or disposition or indeed right to do any manner of thing or things over the land. Where ownership is referred to as bundle of rights, it means, a right which permits the right holder to do many things over the property including right to sale, right to lease, right to give it out as gift, right to possession, right to enjoy, it also include claims, liberties, powers and even duties. In essence, ownership is the totality of rights enjoyed by the owner over a piece of land as a result of the title he has exclusively and absolutely in that property above other person or persons.

Possession
In *Towers & Co LTD v. Gray* Lord Parker C. J., reasoned that the meaning of possession depends upon the context in which the word is used[7]. Inferring from the above, one can safely say that the word possession is vague and may be given one meaning or the other by different persons at different times. However, as it relates to a thing like land or even movable chartels, possession simply means having the physical control of a thing. Possession means that a thing is under ones power or control and the person in possession exercises the highest and fullest control of the thing possessed more than and against any other person or persons[8]. What it means therefore is that a person claiming to be in possession must show the court that the property or land under his possession is indeed controlled by him and under his power. It will therefore amount to an aberration for one to insinuate to be in possession when he has no control over the property purported to be possessed by him nor does he have anything suggesting or showing that the land is under his power. Such a person in our considered view is a joker. There are two types of possession namely (i). Actual possession and (ii). Possession imputed by law which is derived from title. One may be in actual possession even though not the owner of the land. Such a person may be possession either by transfer of possession by owner to him usually for a specific and certain period or by occupation as case may be[9]**.** In other respect, possession imputed by law flow from title which is not unconnected with right of ownership, i.e the person in possession is not just in possession but is also the owner after all[10]**.**Possession and ownership are interconnected such that they are also intertwined. However, when title is established, the real owner is discovered and he matter of possession takes the backseat[11]**.** It is evident therefore that from the above, ownership and possession have close relationship as the person in possession is presumed by law to be the owner of the land until the contrary is proved.

[2] A. U. Abonyi, 2021 Lecture Series, Land Law 1, COOU, Faculty of law. COOU, Igbariam Campus.
[3] ibid
[4] Adewala Taiwo, 'The Nigeria Land Law' (Lagos First Published by Princeton and Associates Printing LTD,) 2011 pg 17.
[5] ibid
[6] B.O. Nwabueze, Nigerian land law, Nigerian land law online. Com. UK. Org (accessed 22/4/2021). (Also referred to in Adewale Taiwo's book 'the nig land law, pg 18.)
[7] *Towers & co ltd v. gray* (1962)2QB351 at 361.
[8] Adewala Taiwo op.cit
[9] A.U. Abonyi, Land Law Lecture Series, 2020, COOU, Anambra State.

[10] ibid
[11] Adewale Taiwo's comments and views in the case of *Ameen v. Amuo*.

Declaration

A declaration of court is an order or decision of court on an issue after trial has been done. Declaration of court is the finding of the court over a declarative relief sought by a party after hearing he parties in a case or suit. A declaration of title to land is an order of court entered to the effect that the plaintiff who sought such a relief has proved his claim or discharged the onus on him to be entitled to the order. It is the same thing that the defendant who filed a counter claim has discharged the onus on him to prove his counterclaim which is a separate and distinct claim and is therefore entitled to declaration in his favour that the land in dispute belongs to him than the plaintiff/defendant in the counterclaim. For a declaration to be made the plaintiff or defendant as counter claimant must prove their case with strong and compelling evidence. The purport of the above is that declaration or declarative relief is not granted as a matter of course nor is it granted for the mere fact that the defendant admitted the claim or plaintiff admitted the counterclaim, the claim and counterclaim must in their respect be proved to entitle the party his relief sought.[12] The court must evaluate the evidence placed before it by the parties and with this done, the court will be in a position to take a definite stand in the matter and declare in favour and against the parties concerned[13]**.** In evaluating the evidence of parties before making a declaration, the court must ensure that the evidence does not go outside the pleadings but must be consistent with the pleadings, if it is and court allows it, it will amount to the court allowing extraneous matters into the proceedings[14]**.** It is also noted that in resolving declaration reliefs, the court are not allowed to look beyond the claim before the court but are usually required and expected to restrict itself to the claim of the party or parties before it. To do otherwise will imply that the court has gone on its frolic which is a good ground for appeal by the aggrieved party.

Claim and Counterclaim

A claim is a right, a relief and an entitlement sought for by a party before a competent court against the other person or party. When a claim is made by a party against the other party before a court, the claimant seeks specific order or orders of court or even declaration as case may be. For a claim to be made or filed, there must be a cause of action and if there is a cause of action, the claimant must be the person affected by the act of the defendant so as to have the right of action. Cause of action and right of action are distinct terms with specific, distinct and different meanings[15]**.**The supreme court in *Bello v Yusuf & others* placing reliance on *Fred Egbe v. Hon Justice J.A. Adefarasin* defined cause of action to mean: 'The fact or facts which establish or give rise to a right of action. It is the factual situation that gives an aggrieved person the right to judicial relief. Cause of action is constituted by the entire set of circumstances which gives right to an enforceable claim'[16]**.** From the above, the cause of action is the act or acts which create difficulty on the plaintiff that makes him to seek redress by virtue of his claim, his right to sue as a result of such act or acts is his right of action. Claim and counterclaim are separate actions, they are different and distinct and the court makes a finding on each of them. Sometimes the claim of the plaintiff may succeed and the counterclaim fails, at other times, the counterclaim may succeed and the claim of the plaintiff fails. Whichever way the claim and counterclaim may be considered, what is important is that they are in their respect independent relief or reliefs made before the court, anchored on the pleadings and sustained by evidence adduced before the court.

Joint Ownership:

Joint ownership is a concept referred to when and where two or more persons are claiming right, title or exclusive control over a property. In joint ownership the interest and benefit of the owners is equal and certain and none of the owners can claim superior right or title than the others. In addition, none of the joint holders of the interest can validly alienate or dispose the property or land subject of the joint ownership tenancy without the consent, notice and approval of the rest of the owners. Where a land is jointly acquired by the owners, the instrument of acquisition must be executed by all the owners unless in the circumstances where any of the owners is residing at such a time at a place where his presence cannot readily be convenient and reasonable that he will be present and in such case, his absence may be excused and then he may authorize another to sign as a proxy on behalf of such absentee joint owner. Nonetheless, the execution of deed of joint ownership will serve as evidence of such transaction in the event that there is a problem arising over the land subject of the joint ownership. It is also observed that a party claiming joint ownership of land must prove certain facts including (i) The existence of document evidencing the joint ownership. (ii). Evidence of contribution to pay the valuable consideration for the land or property (iii) Joint physical control of the land and imputation of control and possession by law. The joint owners of a piece of land takes priority against the whole world over the land but none of the joint owners can or may purport to take priority against other joint owners as they have same and equal right.

[12] *Alhaji Akibu v. Joseph Opaleye & Anor* 1974 11sc 189.
[13] ibid
[14] *Matanmi v. Dada* (2001)46 WRN 61 CA.
[15] *Bello v. Yusuf* (2020)14 WRN 1 PG 4,5.
[16] (2020) 14 WRN 57, LPELR- 1032SC

Admissibility, Computer/ Electricity Generated Evidence:

Any finding of court on any matter between the parties must be anchored on the evidence placed by them before the court and their pleadings. The court does not and cannot arrive at a decision or findings on the air. To do so will amount to the court allowing itself to speculate and the principle which has not changed is that speculation is not and has never been allowed to form part of the business or proceedings of the court. Evidence before the court may be in the form of direct evidence or may well come indirectly before the court. For such direct evidence, they may be oral or documentary and is received in its original and remote form and used by the court in the determination or resolution of a dispute before the court. The evidence may be admissible or inadmissible in their respect. When it is admissible, it means that they have been presented in the form and manner expected of them and the court accepts same. For inadmissible evidence, they are not before the court in the condition or form they are required to be and are therefore not accepted by court.

The word 'admissibility' has to do with the ability of a court to receive and use a piece of evidence. It is not every piece of evidence that is admissible. It must be observed that admissibility by the provisions of the Evidence Act is dependent on relevancy of the piece of evidence to the suit before the court or the subject matter of litigation. Thus, in admissibility, what matters is the relevancy of the evidence and its materiality which points to the weight to be attached to the piece of evidence. Where a court admits a piece of evidence but does not attach any weight to it, the effect of such piece of evidence is nothing more or less than a mere tissue paper. Apart from oral evidence and secondary evidence, there are other types of evidence including hearsay evidence which more or less is most often inadmissible and computer/electronically generated evidence which simply refers to evidence generated through electronic and computer based devices. In admitting evidence electronically generated like from banks, video recording and filming from computers, laptops, and other devices, like Servers, Smartphones, Personal Computer (PC), Computer Networks, the Internet, Intranet, E-Mail Server, File Server, Backup Tapes, Sim Card, Digital Audio Player Storage in the cloud, the rules for their admissibility must be observed.

The word computer under Section 258 of Evidence Act 2011 and under Cybercrime Prohibition and Prevention Act of 2015 is defined to mean an electronic device or computational machinery cable of processing and storing of communication[17]. The word computer is also defined by the National Information Technology Development Agency Act (NITDA) 2007 as an electronic device for processing and storing information. Thus, for evidence to be deemed to be computer generated, it must have been obtained through the devices above, used for related storing and processing of information. Evidence is also electronic if it involves data which is created, manipulated stored or communicated or transmitted by a device, computer or computer system and is relevant to the process of adjudication[18]. Included in the electronic evidence is ATM transactions and MTN voice, audio and video player reproduction created, manipulated and reproduced from electronic devices.Computer generated evidence or electronically generated evidence are evidence of documents made from the original document through computer or electronic device or process or mechanical process. Other form of document may include ones made from the original by process of Photostat, photography, lithography and printing as contained under Section 86(4)of Evidence Act as against the ones under Section87(b). The distinction between Section 86(4) is that it speaks about documents made from one uniform process whereas Section 87(b) refers to copies made from original.

For computer generated or electronically generated evidence, there must be a certificate filed by a party tendering or relying on such evidence in line with almighty Section 84 of the Evidence Act 2011. Section 84 addresses inter alia legal issues relating to admissibility of a statement contained in a document produced by a computer. Thus, the section settles the gap existing in the old evidence act on the issue of admissibility of electronically generated evidence. In particular, Section 84 (2) a_ b enumerates the conditions that must be satisfied before the statement contained in a document produced from a computer or electronic device can be admitted and Section 84 (4) requires a certificate signed to authenticate the document by a person occupying a responsible position in relation to any manner mentioned in the statement. By Section 258(1), the Act broadly expands the definition of document to include items under subsections a,b,c and (d) of Section 258(1) i.e books and others, disc, tape and others, film, negative tape etc and any means for which information is recorded etc. The provisions of Section 84 of Evidence Act no doubt has settled the seeming controversy created by the old Act and has saved the court and litigants as well as their counsel the stress, time and energy spent in finding the best ways and manner or form in which these species of evidence can be for them to be readily admissible without objections one way or the other.

[17] Section 258 of evident act, 2011.

[18]Section 2(5) of the Uniform Electronic Transaction Act 1999 (US), Also In Alaba Omoloye Ajileye, *Electronic Evidence* (Revised Edition, Samok Printer,(Ibadan,) 2019.)

3. Facts of the Case in the Claim and Counterclaim of Parties in *David Nwankwo Egemonye v Peter Obichukwu Egemonye*[19]

The facts of the case of *David Nwankwo Egemonye v Peter Obichukwu Egemonye* is simple and clear just as is the relationship between the parties which is that they are brothers of full blood and children of Late Chief and Mrs Umegwuatu Egemonye of Akaboukwu in Uruagu Nnewi North LGA. of Anambra state. The plaintiff by his writ filed on the 10th day of May 2016 claimed before the court that the land in dispute known and called Anaobi David Egeminye and lying at Akaboukwu, Uruagu Nnewi beneficially belongs to him being the homestead or Anaobi granted to him exclusively by his father at the time he shared his properties to all his male children begat by his respective wives including himself, the defendant and their other brothers. Plaintiff maintained that he took possession of the land in dispute and developed same by erecting his family house and another one housing the kitchen. The plaintiff who lives in Bukinafo where he carries on his business of sale of new auto spare parts returned home and discovered that the defendant without notice and approval broke into the kitchen axis of his compound and started living therein, defendant was confronted by plaintiff over the trespass but some of his other brothers pleaded with plaintiff to allow defendant to be in the house for a while as he had no other place to lay his head which plaintiff accepted. However, the defendant thereafter started claiming the land in dispute to be the homestead and Anaobi granted by their late father jointly to him and the plaintiff and the house to be a house jointly built by him and the plaintiff out of their joint business, the defendant as a result upon service of the claim filed a counterclaim on the 20/20/2016 where he sought for a declaration that himself and the plaintiff are joint owners of the land in dispute as well as the property on it being their homestead situate within the compound of late Chief Umegwuatu Egemonye their father. The plaintiff was served with the counterclaim and he thereafter filed reply to the statement of defence and defence to counterclaim and adopted his pleadings in support of his claim as pleadings in defence to the counter claim. At the close of pleadings, the parties filed pre-trial conference forms and a pre-trial conference was done by court and thereafter, the court commenced trial of the matter with each of the parties given the opportunity to present their respective cases and both called two witnesses and closed their cases and following which the court ordered for final addresses and reply on points of law where necessary and adjourned for judgement. It is imperative to note that the reliefs contained in the claim of the plaintiff and the counterclaim of the defendant were basically interrelated and similar and ranged from: (a). declaration (declarative) relief, (b) Injunction (injunctive) relief.(c) damages.

It is elementary that no claim is granted as a matter of course but must be proved satisfactorily as required by law and without such proof, the claim fails. The claimant must prove his claim by adducing evidence credible enough to sustain or establish the claim. A claimant will not be entitled to his claim if he has no evidence on ground to substantiate his claim and his claim cannot be said to have been proved simply because the defendant presented no defence or that his defence is weak. Plaintiff will be entitled to his claim on the basis of evidence he produced before the court. This view was echoed by Supreme Court in *Bello v Eweka*[20]. What it means is that from the two supreme court authorities of *Bello* and *Salu* (supra), the plaintiff and the defendant in the case under review will not stop at the fact that the land in dispute is his Anaobi as claimed by plaintiff and their joint homestead as counterclaimed by defendant but must and are under a legal duty to prove that indeed and in fact, the land in dispute belongs to plaintiff as his Anaobi or to the two of the parties as joint owners as contended by defendant. Only the evidence placed before the court by both of them will make the court to conclude one way or the other as to who has discharged the onus placed on him by law and owing which such a person shall no doubt be entitled to judgement. The law has not changed in our jurisdiction that he who asserts must prove and where in a civil proceeding, a fact or an assertion is proved irresistibly by a party, the law sees or deems it that such a party has discharged the legal burden placed on his head by law and the burden is shifted to the other party who will suffer or fail if no other evidence is presented in contrary to the one before the court[21]. The evidence to prove their respective claims by the parties does not come from the air but from the laid down rules, principles and procedures and practice in our legal system[22].

4. Proving the Claim, The Counterclaim Before the Court And Condition Precedent Expected from Parties

A claimant is one who makes a claim against the other before the court. A claim itself is a legal entitlement or relief which a person makes before a court of law against another. It is settled that a claim arises when there is a cause of action. Thus, without a cause of action, there cannot be any need to make a claim before the court. A claim can be for declaration of title as is the case in the case reviewed[23]. it can also be for damages or for injunction

[19] SUIT HN/133/2016

[20] (1981) ISC 101, also in *Salu v Egeibon*(1994) 6 NWLR PT 348

[21] A. U. Abonyi, commentaries, land law lecture series 202/2021 academic session, faculty of law, COOU, Anambra state.

[22] ibid

[23]Unreported suit HN/133/2016 *David Nwankwo Egemonye v Peter Obichukwu Egemonye*, judgement delivered on the 12th March, 2020, high court of Anambra sitting at Nnewi.

or for trespass as case may be or may be for a combination of the reliefs[24] . Thus, a claim may not be limited to one particular relief but may be for two or more reliefs depending on the loss or injury or hardship suffered. A claim may be filed by way of writ of summons issued by the claimant or through his agent preferably a legal practitioner with known address and filed along with the particulars of such claim, statement of claim containing the reliefs, the statement on oath of witnesses to be called as well as list of documents relied or to be relied by the claimant. We observe with every sense of respect that the issue of front loading the statement of witnesses to be called by the parties and the documents they will rely on during trial is a recent practice in our jurisdiction backed up by the new rules of court in the different states of the country as against the previous provisions that did not allow such practice.

Where the claim is filed either by writ of summons, or originating motion, or other ways of instituting actions, the registrar receives the processes filed after the claimant has paid the necessary fees and thereafter the defendant is served with the process of the suit by the sherrits of court. Upon service, the defendant must take some steps under the law which includes either of the following:

(i). he admits the claim.
(ii). He denies the claim by filing his statement of defence.
(iii). He denies the claim and files a cross action or counterclaim.
(iv). He sets off (in cases where monetary claim is made).
(v). he approaches the claimant for settlement.

Each of the above steps has its implication, where defendant admits the claim, the law will deem it that the claim of the claimant is proved and does not need further proof. Such admission may be formal or informal, formal admissions apply to civil proceedings, informal admissions apply in civil and criminal proceedings. Formal admission is binding on the person who made it and cannot be varied or contradicted, but informal admission can be denied[25]. The Supreme Court held that formal admission by a party relieves the other party of the need of going through the process of proving his claim or facts[26]. Such admissions can be in pleadings, answer to interrogatories, by counsel, by agreement and in answer to notice to admit. Where a defendant denies a claim instead of admitting it, he files his statement of defence with his pleadings and averments in denial of the claim and the only option left is for court to go into hearing of the matter. Similarly, where a defendant denies the claim of claimant but believes there is need for him to make his own claim against the claimant, he must file his statement of defence and a cross action or counterclaim where he sets out his own claim against the claimant. The cross action or counter claim is a distinct, separate action and is also independent action which may arise from the same transaction with that of the transaction from where the claimant's claim was instituted or from the same subject matter[27].

The position of the law is that a claim or counterclaim which is in their respect independent actions must be proved by the party or parties making them before the court to entitle them judgement. The claim and counter claim being civil claims must be proved on the balance of probability as required by law. He who asserts must prove[28]. and whoever is bound to prove the existence of a fact has the burden of prove such fact[29]. It is also trite that the burden of proving a fact lies on the person who will fail if no evidence is given on either side over a fact[30]. The burden of proof also rest on the head of the party against whom the judgement of court would be given if no evidence is given on either side which is regard to any presumption that may arise on the pleadings before the court[31].

In the case reviewed, the plaintiff David Nwankwo Egemonye claimed declaration of title, trespass, injuction damages and recovery of possession while the defendant also sought in his counterclaim declaration of title to the land in dispute to the effect that it is jointly owned by him and the claimant. In proving his claim which is in accord with the law, the plaintiff David Egemonye traced his root of title to the land indispute to his late father Late Umegwuatu Egemonye from Akaboukwu, Uruagu Nnewi. In his pleadings supported by the evidence of his two witnesses Pw1 and Pw2 (himself and his Elder Brother Dominic Egemonye (brother of full blood with the parties) the plaintiff established and strengthened his claim by recourse or traditional evidence, prolonged

[24] *Nwanko v Nwanko* (1995)5SCNJ 44 at 62.
[25] *Nwanko v Nwanko* (1995) 5SCNJ 44 at 62.
[26] ibid
[27] *Ige v Farinde* 1994 98 SCNJ pt 2 284 at 305, also see order 23 rule 16 of Abuja rules, order 15 rule 2 and order 17 rule 6 of Lagos rules and order 10 of Anambra rules.
[28] Section 131(1) EA 2011
[29] Section 131(2) EA, 2011
[30] Section 134 EA, 2011
[31] Section 133 (1) (2) EA, 2011.

possession, documentary evidence and manifest acts of ownership. According to the plaintiff in his pleadings and his evidence as Pw1, the land in dispute was granted to him as Anaobi by his father before his death alongside his other brothers including the defendant who was granted his own Anaobi at a place called Aga Agbo Akaboukwu which he outrightly sold thereafter. The plaintiff also pleaded and reinforced it in his evidence that their father after the granting of the Anaobi respectively to his male children individually, that he still had other lands out of which as children of their father's third wife, they were jointly granted another piece of land known as Anambubo which they have shared and that defendant started a building on the portion allotted to him from the Anambubo and tendered a picture showing the defendant's uncompleted building on the said land. Plaintiff maintained that in 2005, defendant who was then staying in the house of one of his brothers Felix was pushed out by Felix and in 2006, defendant without his consent broke into his house and took occupation of his two room apartment at the kitchen quarters of his compound and thereafter in 2009 started laying claim of the property. On the part of defendant, he claimed that the Aga Agbo Akaboukwu land was not his Anaobi but a gift made to him by his father in appreciation of his care to him, he pleaded and gave in evidence that the land in dispute was given to him and plaintiff by their Late father and the building on it erected from their joint business, he also relied on documents like the plaintiff.

A look at the pleading and evidence of plaintiff in support of his claim show that he relied on series of documents including survey plan, building plan approved by relevant government agencies, receipts for re-tracing of building plan, tax clearance receipts for approving of the building plan, receipts of purchase of building materials for the building in the land in dispute and others. These documents are compelling evidence suggesting and showing that not only that the plaintiff has been in a protracted long possession, he has also manifested acts of ownership in the disputed land than the defendant. In addition, PW2 Dominic Egemonye (brother of full blood to parties) also confirmed as having supervised the building for plaintiff while he was building his house in the land in dispute and tendered some receipts of purchase of building materials in his names while the building was constructed and subsequently after completion and other times when renovations were carried out.

Defendant opened his case and tendered some documents including deed of gift of Anaobi, survey plan of land in dispute, copies of Magistrate Court suits. Defendant presented two witnesses DW1 and DW2. Defendant maintained that in 1967, his father granted Anaobi to all his male children in his compound except Edmund who opted to build his house at a place granted to them for farming purpose by their father outside their compound, he also claimed that in 1997, he started a joint business with plaintiff and later erected a building jointly with plaintiff on the portion of homestead granted to them by their late father from the proceeds of the business and sought declaration that the land in dispute and building is jointly owned by him and plaintiff.

It is trite law that where a person is in possession of a property he claims to be his own, the burden of proving that he is not the owner is on the person claiming that he is not the owner[32]. From the claim of the plaintiff, he has shown to be in possession of the land in dispute since the time the grant of same as Anaobi to him by his late father Umegwatu Egemonye and has never disputed same with anybody, he has also been in possession of the building he erected in the land in the land dispute which he completed over many years ago. The plaintiff after the grant of Anaobi by his father to the time of the crisis has been in possession for a period not less than thirty years, he has also been in possession of the building he erected on the land for a period not less than ten years before defendant broke into the kitchen axis of the house in 2009. The defendant took occupation of the kitchen apartment of the plaintiff's house and thereby challenged plaintiff's ownership of the land and the building. By Section 143 of Evidence Act of 2011, there is a legal burden on defendant in our view and he failed to discharge this burden. There is no evidence supporting the claim of joint ownership of the land in dispute or the house on it whether documentary or oral and defendant left the court to speculate. Even the so called deed of gift has no nexus to the land disputed, the suit for possession of the kitchen axis of plaintiff's building by plaintiff against the defendant which were discontinued by a notice of discontinuance filed by plaintiff supports the case of the plaintiff that he took steps to eject the defendant before the present suit for declaration of title.

A declaration of title is a discretionary remedy, a plaintiff seeking it has the same legal burden of proof as well as the evidential burden within the purview of Sections 135-7 of Evidence Act. This view is also supported in the case of *Adda v Jassen*[33]. The first thing a claimant of a land should do is to identify the land if not the claim fails[34]. Although the identity of the land is not in dispute between the parties, the plaintiff discharged this legal duty of showing the court the identity of the land in dispute its size and measurement by the survey plan he tendered and was received in evidence as Exhibit. His evidence was consistent with his pleadings as laid by court in *Uchendu*

[32] Section 143 OF EA, 2011.
[33] (2004) ALL FWKR PT 230 1011 AT 1034CA.
[34] *Olokotintin v. Sarumi* (1997) INWLR (Pt 480) 222CA

v. Ogboni[35]. The traditional evidence put forward by plaintiff in proving his claim is conclusive, that of the defendant is inconclusive and contradictory and in such situation, the courts have held that where there are two evidence of traditional history put forward by plaintiff and defendant, the one that is ex facie plausible and credible will be preferred[36]**.**

The traditional evidence of plaintiff relating to the land in dispute is clearly plausible and credible than the purported evidence of traditional history of defendant tending to suggest that the land in dispute was jointly granted as Anaobi and that the house was jointly built from proceeds of a joint business. There is nothing suggesting that the land is a joint homestead and nothing was placed before the court that a joint business was ever created or entered by parties. The plaintiff also sustained his claim by showing the court that he has a building and tendered documents connecting him to the building and the land. The act of erecting a main house and the kitchen quarters suggests strongly that plaintiff owns the land. If the land and the building in particular is owned jointly by the parties, why should the defendant broke into the kitchen quarters whereas the main building is standing, defendant has nothing that could be said to have been done by him, he placed nothing suggesting that he contributed towards the building of the house in the land in dispute and had nothing to present to court to show joint ownership he is insinuating. The court will be inclined to declare in favour of a party who has shown manifest acts of ownership than the other party making imaginary and unsubstantiated claim of ownership without anything to show for it. Plaintiff also produced documents which are genuine and relevant to the suit as they relate to the land in dispute and the building on it. All these made his case strong and left the court with no other option than to hold that he proved his claim and that the counterclaim of the defendant instead failed.

Finally, where the defendant elects not to go through the process of defending or filing a cross action upon service of claim, he can set off the claim especially where the claim is purely monetary by giving evidence of indebtedness to him by plaintiff and giving notice of his intention to set off the amount plaintiff owes him from the one he is owing the plaintiff. Where set off is agreed, only the balance will remain and in such case there may not be need for trial but rather a memorandum of payment by installment of the outstanding maybe entered. Aside set off, and other steps above, the defendant may also opt to settle the claim with the plaintiff and if this is exploited, the matter may not go into hearing but where settlement is perfected, parties reduce their agreement in writing in what is called Terms of Settlement which they adopt after signing it as consent judgment and urge the court to enter same as judgment at the instance of parties or consent judgment which has same binding effect as judgment after full trial by court.

5. Reviewing the Laws, Cases, Statutes Referred to by the Court and the Rules laid based on Evidence of the Parties:

In arising at its decision in this suit, the Honourable Court applied relevant laws and statutes, relied on the rules of court and decided authorities which informed the position of the court. Include in the principle relied by the court are:

(i). The principle to the effect that court is bound by the pleadings of parties and the facts that any fact or set of facts not pleaded goes to no issue.

(ii). The principle that court do not look beyond the claim or counter claim before it and is limited to make a decision or conclusion regarding the claim before it and not beyond it.

(iii). The principle that in any civil suit like the instant case, the standard of proof is on the preponderance of evidence or balance of probability and once a party has satisfactorily done this, the court will likely and without any doubt resolve the suit in his favour.

(iv). The principle that facts in the pleadings is not proved on the air but with or by evidence adduced and in evaluation of evidence of parties, the court places the evidence in a scale and identifies out the evidence of the parties which one outweighs the other in terms of probative values, geniuses or credibility than the other.

(v). the principle that for a document to be admissible in evidence, it must not only be pleaded but must be positively relevant to the facts in issue or to the subject matter.

(vi). In addition, there is also the principle to the effect that section 84 of evidence act 2011 has settled the controversy over tending electronically generated evidence and that once the conditions therein are fulfilled the piece of evidence document generated electronically will be admissible in evidence.

The principles above are reinforced by the provisions of laws, statutes as well as decisions of court which are used as precedents in guiding the future conduct of similar civil proceedings in our courts. Thus, apart from pleading a fact or facts, a party is also required to satisfy the conditions to make the documents emphasizing or establishing

[35] (1999) 5 NWLR (Pt 603), 337, *Atanda v. Ajani* (1989) 3 NWLR (PT 111) AT 511

[36] *Ogunyele v. Oyewole* 2000 4 NWLR (Pt 687) 290 301 and 307

the facts to become relevant in the proceedings. Thus, if a document is pleaded, the document must be in the form which the law requires it to be for it to be for it to be admissible, if the original is required but there is no original, certain conditions must be laid for court to allow a copy of the original. The plaintiff tendered exhibit F and F1 (picture showing unfinished house under construction by defendant) but was objected to because the memory card was not tendered. However, plaintiff contended that the issue of memory card has been overtaken by electronic production. Through, the court was silent on whether or not the issue of memory card has been overtaken by electronic production, the finding of court that plaintiff did not comply with the conditions of admitting evidence generated electronically under section 84 of the Act is in our view correct as a part from other conditions, there was no certificate made and filed by a person having personal knowledge of the purpose and use for which the device used to produce the photos was made. Thus, the reliance by court in *Ume & others v. Ibe* is apt[37]. It is therefore not enough to plead a document, such document must be positively relevant to the subject matter of the suit. The objection to the photos was sustained and expunged.

The honourable court was also right in refusing and overruling the objection by defence counsel on the admissibility of the tax receipt used in the obtaining of building plan by plaintiff on grounds that it was not tax clearance. The position of the court that the materiality of the tax receipt was its relevancy in proving the acts of possession of the subject matter by plaintiff far outweigh the contention by the defendant that it ought to be tax clearance. The reasoning of the court in the our thinking is that what is important is the rational or purpose of tax receipt or tax clearance which in our understanding simply signify the fact that the holder has paid his tax and as a taxable adult, it shows that he is meaningfully engaged and deserve to be given a building plan for the purpose of erecting a building in the land in dispute as at the time he commenced the building. The tax clearance and the building plan are all relevant and all necessary requirements for them to be admitted were certified and they were admitted and reliance by court in the case of *Abubakar v. Chuks* is supported[38].

The Honourable Court also relied on the traditional evidence of plaintiff which the plaintiff's counsel argued that it is unchallenged by defendant referring the court to the case of *Idundun v. Okumagba*[39] and *Nka Duo v Obiano*[40]. Where the five ways of proving title to land were highlighted to wit:

a. Traditional evidence.
b. Production of documents of title dully authenticated.
c. Acts of selling, leasing or renting out of all or part of the land, farming on it.
d. Proof of ownership of connected or adjacent land.
e. Acts of long possession and enjoyment.

The plaintiff not only placed strong traditional evidence but also presented documents and showed long possession and enjoyment and acts of ownership in the land against the defendant who claimed on one hand that the land was jointly given to him and plaintiff by their late father and on the other hand said that their father made demarcations of the homestead showing that each person had his own distinct portion, this is more or less shooting himself or stabbing himself on the leg and making two contradictory statements in two breaths blowing hot and cold. If the defendant wants the court to believe that their father demarcated their Anaobi individually, as he made in paragraph 7 of his counterclaim, then it will be laughable for the same person to assert that the land in dispute is jointly owned by him and plaintiff since the correct purport of the demarcation is that each of the Anaobi given to every person is distinct from the other. This is where we view that defendant stabbed himself in the leg and wanted to be smart but succeeded in messing himself up. It is a pity for no court will look at such a litigant without concluding that he or she is deceiving the court and not telling the truth. An important portion of paragraph 7 of defendant's pleading in the counterclaim is shown thus: 'that during the demarcation, their father buried a rod of about four feet as boundary between defendant's portion and the plaintiff's portion of land'.

The court noted that the averment of the defendant above defeats the claim by him that the land in dispute is jointly owned as each person after the demarcation expectedly supposed to have his distinct Anaobi. Even the memorandum of gift tendered and received could not save the defendant as the content of the document is at variance with defendant's pleading. More worrisome also, defendant failed to use the survey map referred in Exhibit L which could have assisted the court to determine the land allegedly given to defendant in the compound that is verged pink in the light of plaintiff's claim. This was a fundamental failure as the identity of the land so described by defendant is vague and unclear. We agree in totality with the honourable court that on the balance of preponderance of evidence of parties, the evidence of plaintiff outweigh that of the defendant and the court

[37] *David Nwankwo Egemonye v. Peter Obichukwu Egemonye* (supra).
[38] *Abubarkar v. Chuks* (2007) 18 NWLR pt 1066 386 SC.
[39] (1976) 9-10 SC 227
[40] (1997) 5 NWLR Pt 583 31.

has no option than to hold that the plaintiff proved his claim and entered judgement in his favour declaring him the plaintiff:

1. The owner of the land in dispute.
2. And that defendant is a trespasser in the two room apartment in the kitchen axis.
3. Granting order of perpetual injuction restraining the defendant and his privies from doing anything connected with or in the land.
4. Order of possession of the two- room apartment and its appurtenances in favour of plaintiff.
5. And damages of ₦300,000 naira in favour of plaintiff and the court made.
6. No order as to cost.

6. Conclusion and Recommendations

It is our reasoned view that the honourable court applied correctly the relevant rules and principles of law in arriving at its decision and the judgement no doubt is well conceived and met the justice of the case and we totally agree with court. It is recommended as follows that litigants must know their claim before the court and adumbrate their claim with genuine and credible evidence so as to sustain the claim. Lawyers must remember that their duty to their clients and court is sacred and must not be scarified under any disguise, lawyers must advise the clients wisely and owe a duty to his clients to let him know when he has a bad case from the facts of the case and suggest for him other options like settlement and meditation than litigation. The pleading of a party can help him to prove his case or mar or destroy his case, it is advised that pleadings must be well couched and may be better in brief than being unnecessarily verbose. Where some paragraphs in a pleading of a party are contradictory, it is a pointer that the party has no claim or is trying to deceive the court; it is advisable to say less than include the facts that may ruin your case at the end. This issue happened to the defendant in the case reviewed where he claims the land in dispute to be jointly owned by him and plaintiff on one hand and in the same pleading that his father demarcated the Anaobi and used iron rod to demarcate that of plaintiff and his own. If that is true, what is the joint ownership, nothing suggests that, rather it points to the fact that the Anaobi of every male child of Late Umegwuatu Egemonye (their father) is distinct and separate from each other.