

IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF IDEMILI JUDICIAL DIVISION
HOLDEN AT OGIDI

BEFORE HIS LORDSHIP THE HON. JUSTICE I. U. NDIGWE
ON WEDNESDAY THE 30TH DAY OF NOVEMBER, 2022

SUIT NO. HID/190/2012

BETWEEN:
MR. UCHE OFORAH

=

PLAINTIFF

AND

1. MRS. NWANAGU NWEZE
2. MRS. CHRISTIANA EJIKEME
3. MASTER IFEANYI MARTHA
4. MASTER CHUKWUEBUKA MARTHA
[Suing through their guardian/next of
Kin Mrs. Nwanagu Nweze]

}

DEFENDANTS



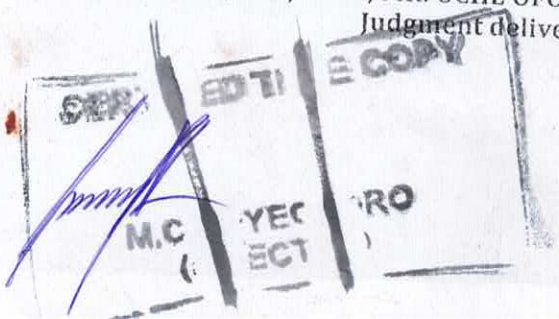
J U D G M E N T

The Plaintiff took out the Writ of Summons in this suit against the Defendants on the 11th day of September, 2012. In paragraph 15 of his Amended Statement of Claim dated 6/2/2017 and filed on 7/2/2017, he claimed against the Defendants as follows.

- A. Declaration that at the death of late Mr Iwuchukwu Oforah, his compound and Landed properties devolved to the Plaintiff absolutely being the diokpara, head of family and his only surviving son.
- B. Declaration that the Plaintiff is the owner of the land late Mr. Iwuchukwu Oforah bought in his name from the Nwasike family.
- C. Declaration that the 3rd and 4th Defendants not being the sons of late Mr. Iwuchukwu Oforah are not to partake in inheritance of his properties.
- D. N3, 000,000 (Three Million Naira) general damages for trespass.
- E. N878, 350 (Eight Hundred and Seventy Eight Thousand Three Hundred and fifty Naira) special damages for the damages carried out by the Defendants to the Plaintiff's shop and properties/ goods.

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- F. A declaration that under the Obosi native law and custom the female children are not entitled to share the landed properties of their father with the male issue.
- G. An order of perpetual injunction restraining the Defendants, their assigns, their privies, heirs, agents from partitioning or trespassing or in any manner whatsoever interfere with the plaintiff's possessory right over the land now in dispute.

Upon service of the plaintiffs' Statement of Claim, the Defendants filed their Amended Statement of Defence and Counter Claim on 23/11/2016 and claim as follows:

- A. Declaration that the Defendants are entitled to the grant of the statutory certificate of occupancy over the piece or parcels of land with an annual value of N10. 00 representing Late Ogbueshi Martha Oforah Mkpuke's share of the landed property of late Iwuchukwu Oforah shared by the Obosi traditional Arbitration.
- B. Alternatively, an order of court partitioning the compound of late Iwuchukwu Oforah situate at (Village Obosi into two between the two Mkpuke that is, the Plaintiff representing his late mother's mkpuke and the Defendants representing Late Ogbueshi Martha Oforah mkpuke in the late Mr. Iwuchukwu Oforah's family in accordance with the Constitution of the federal Republic of Nigeria and the native law and custom of Obosi.
- C. A perpetual injunction restraining the Plaintiff, his agents, servants, privies, workmen etc, from further interfering with the Defendants use and rights over the said parcel of land verged pink in the Defendants Dispute Survey plan to be filed later in this suit, or the Defendants portion of the Late Iwuchukwu Oforah's compound as would be demarcated by the Honourable court.
- D. N2, 000,000 damages against the Plaintiff for trespass.
- The Plaintiffs did not file any Reply to the statement of Defence and Counter Claim

At the hearing, the Plaintiff testified as PW1 and called two other witnesses who testified as PW2 & PW3. The Defendants called two witnesses who testified as DW1 & DW2.

Plaintiff tendered the following documents;

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Exhibit "A" = Deed dated 5/5/1952
Exhibit "B" = Certificate of facts filed on 23/9/20
Exhibit "B1" - "B10" = Photographs

While the Defendants tendered the following documents;

Exhibit "C" = Arbitration Judgment
Exhibit "E" = Judgment dated 18/8/2012

The Plaintiff's case is that he is a native of Ire Village, Obosi in Idemili North L.G. A of Anambra state and the only surviving son of his father, late Mr. Iwuchukwu Oforah by his 1st wife Late Mrs. Orjiagwu Oforah. And that presently he is the head of the Late Mr. Iwuchukwu Oforah's family. According to the Plaintiff his late father Mr. Iwuchukwu Oforah married three (3) wives in his life time, Late Mrs. Orjiagwu Oforah (the Plaintiff's mother) Mrs. Adaobi and Ogbueshi Martha Oforah, and the mother of the 1st and 2nd Defendants. It is further the case of the Plaintiff that, he is the only son begotten by his late father through his 1st wife while the rest of his father's wives begot female children including the Ogbueshi Martha Oforah, the mother of the 1st and 2nd Defendants and that before his father died in 1961, his compound comprises of his obi and two Mkpukes for his two remaining wives as the 2nd wife Mrs. Adaobi remarried.

The Plaintiff further averred that his father in his life time also purchased a parcel of land in his name from Nwasike family evidenced in EXHIBIT A and for Plaintiff's sole use and that under the Obosi native law and customs, the entire compound of his late father after his demise devolves on his surviving male children and on him as his late father's only surviving son. According to the Plaintiff, sometime in between 2003 and 2005, Ogbueshi Martha Oforah, the mother of the 1st and 2nd Defendants but now deceased connived with her daughters, the 1st and 2nd Defendants and brought a woman from Nkpor-uno claiming that the said woman is married to her under the Obosi native law and customs and to bear children through the said woman for the Plaintiff's father who died long ago in 1961. That the said woman brought by the Ogbueshi Martha Oforah, the mother of the 1st and 2nd Defendants begot the 3rd and 4th Defendants and that the Defendants through several attempts are now seeking to partition the Plaintiff's late father's compound between the Plaintiff and the 3rd and 4th Defendants.



The Plaintiff further averred that the Defendants in one of those attempts to partition his late father's compound entered and destroyed his fully stocked provision shop and all his goods in the said shop evidenced in Exhs. B1-B10. The Plaintiff then prayed the Honourable Court to grant the reliefs as contained in his Amended statement of Claim filed on 7/2/2017.

The Plaintiff at the trial testified as PW1 and called two other witnesses, Mr. Ekemezie Okafor as PW2 on the 1/2/2021 and Mr. Frank Okafor as PW3 on the 18/11/2021. Both witnesses stated that they knew the Plaintiff's family and knows the Obosi native laws and customs and that the said customs does not permit a widow whose late husband already begot a son in his life time to marry another woman for the purposes of bearing male children for the deceased husband.

The Defendants denied the case of the Plaintiff. According to them, late Mr. Iwuchukwu Oforah by Obosi native law and custom had two other sons, the 3rd and 4th Defendants respectively. The Defendants stated that while the 1st and 2nd Defendants are the biological children of Ogbueshi Martha Oforah, the 3rd and 4th Defendants are her children under the Obosi native law and custom. The Defendants stated that in line with the Obosi native law and custom, Ogbueshi Martha Oforah, with the support of Umuecheogu kindred married one Mrs. Uzoamaka Oforah who gave birth to the 3rd and 4th Defendants in accordance to Nrachi custom. The Defendants stated that the Deed tendered by the Plaintiff in claiming that their late father purchased a parcel of land from Nwasike family is a forged document and that Late Mr. Iwuchukwu Oforah was a stark illiterate while the Plaintiff was barely three years by 1952.

The Defendants also stated that the entire Late Mr. Iwuchukwu Oforah Compound has always been in the exclusive use of Mr. Iwuchukwu Oforah during his life time and at his death, late Ogbueshi Martha Oforah while she was alive and the Plaintiff's mother shared the land into two for their farming purposes; when the Plaintiff married a wife, the compound was further divided into three to enable his wife have a portion for farming. The Defendants testified that one year after the death of the Plaintiff's mother, their mother late Ogbueshi Martha Oforah requested that the portions of land be reverted to two portions but was refused by the Plaintiff. That late Ogbueshi Martha Oforah reported the issue to

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Umuecheogu family meeting and that they pleaded with late Ogbueshi Martha Oforah to retain one third of the farm land in the interest of peace and that she demarcated her own share of the land with dwarf wall fence about 2009.

The Defendants stated that between 1978 and 1980, they erected a two bedroom bungalow for their mother late Ogbueshi Martha Oforah and that between 1999 and 2000, they renovated and upgraded the said two bedroom bungalow to a three bedroom and a parlor house with extra kitchen, That on the 20/3/2012, late Ogbueshi Martha Oforah wanted to erect stores in front of said one third share of the farm land but the Plaintiff fomented trouble, destroyed and scattered the working tools of their workmen leading to a report been made to the Obosi Police Station. The Defendants stated that the Obosi native law and custom does not give the only male child who survived his father at the latter's death an absolute right over the father's compound. The Defendants claimed that Obosi custom permits a woman or wife who did not have a surviving male child for the husband at his death to have a male (or children) through her unmarried female child(or children) or through another woman she might bring in (or marry) with the consent of her late husband's family. The Defendants stated that their late mother Ogbueshi Martha Oforah married Mrs. Uzoamaka Oforah (Nee Okeke) who begot the 3rd and 4th Defendants with the consent of the Late Iwuchukwu Oforah's Echeogu family members.

The Defendants stated that the Umuecheogu family gave a verdict dated the 18/8/2012 but that the Plaintiff rejected it and went back to the Palace but that the Traditional ruler adopted the verdict of the Umuecheogu family on his verdict of 28/8/2012 (EXHIBIT C) and delegated members of Okwuolisa council to share the compound of Late Iwuchukwu Oforah and that the compound has been shared in accordance to that directive.

The Defendants stated that the delegated members of Okwuolisa council told the Plaintiff to relocate his store to his own side of the compound and denied the claims of the Plaintiff. The Defendants prayed the court to grant the reliefs in their counter claim.

Testifying for the Defendants as DW2 is Chief Anthony Ofodile who stated that he is a member of the Umuecheogu family meeting and tendered the verdict of the Umuecheogu family meeting as EXH D. He



stated that when the Umuecheogu family meeting arbitrated and also demarcated the compound of Late Iwuchukwu Oforah, the matter has not been brought to the court and that Umuecheogu family meeting does not adjudicate in matters already pending before a court of law. Mr. Anene Egbuonye testified for the Defendants as DW3 and stated that he is a member of Okwuolisa council. He tendered the verdict of Okwuolisa council as EXH E.

At the close of hearing, Counsel for the parties filed their respective Final Written Addresses wherein they presented issues for determination. The Defendants' learned Counsel, C. J. Iredu Esq. presented three issues for determination as follows:

- I. Whether the Plaintiff has absolute right over the properties of late Mr. Iwuchukwu Oforah.
- II. Whether under the Obosi native law and custom and under the constitution of Nigeria female children are not entitled to share in the landed properties of their late father with the male children.
- III. Whether the unavoidable circumstances of the birth and the position of the 2nd and 3rd Defendants in the family of late Mr. Iwuchukwu Oforah will disinherit them from the share of the properties.
- IV. Whether the Plaintiff has specifically proved special damages in order to be entitled to an award.
- V. Whether the issue of trespass avails the Plaintiff in this case.

The Plaintiffs' learned Counsel G. O. Tamuno Esq. presented two issues for determination as follows:

- I. Whether the Plaintiff has by his evidence before this Honourable Court proved his case before this Honourable court to entitle him to the reliefs he seeks in this suit.
- II. Whether the Defendants/Counter Claimants have proved their case before this Honourable Court to entitle them to the reliefs sought in the counter claim.

Both counsel extensively addressed the court and cited various authorities to support their contentions. I have carefully gone through the issues canvassed by the parties. However, except the last issue raised by the Plaintiff's counsel, I will adopt all the issues canvassed by both counsel herein as the issues for determination in this suit.



It is pertinent to note that in the course of proceeding, the Defendants' counsel objected to the tendering of some documents provisionally admitted as Exhibits "B", "B1" - "B10" which are photographs and certificate of facts on the ground that there is no negative to the said pictures. The Plaintiff's counsel submitted that the Plaintiff also tendered a certificate of facts to the effect that the Photograph was printed from his phone. That it is computer generated evidence [picture] printed from his damaged Nokia phone.

I have carefully considered the submission of the counsel on both sides. It is beyond doubt that admissibility of evidence is governed by section 6 of the Evidence Act 2011 [as amended]. Thus, the yard stick for testing the admissibility of any document is whether the said document is relevant, pleaded and is admissible in law. See the case of **Dunniya vs. Jimoh [1994] 3 NWLR [pt. 334] @ 609**. In the instant case, a careful look at Exhibits "B", "B1" - "B10" are pictures, computer generated evidence. There is also a certificate to that effect which complied with the provisions of section 84 of the Evidence Act. The said Exhibits "B" "B1" - "B10" are hereby admitted and the objection of the Defendants' counsel is hereby overruled.

Again, before considering the substantive issue, it is necessary to consider the preliminary issue raised by the Plaintiff's counsel in his final written address to wit: Whether by the Order of this Honourable Court made by His Lordship Hon. Justice Ike Ogu on 12/3/2018 striking out the counter claim of the Defendants/Counter Claimants, the Defendants have any counter claim capable of been determined by the Honourable court. The Plaintiff's counsel submitted that by the order of the Honourable Court on 12/3/2018 striking out the Counter claim of the Defendants, the Defendants/Counter Claimants have no counter claim capable of being determined by the Honourable court. He urged the court to so hold.

I have carefully considered the submissions of the learned counsel for the Plaintiff. I have equally perused the records of the court, it is my finding that upon Plaintiff's counsel application in motion number HID/300M/2018 praying the Honourable court to strike out the Counter Claim of the Defendants/Counter Claimants as being incompetent for having being filed through improper/or non-living party on 12/3/2018. The Honourable court upon considering the said motion and the argument of



the Defendants' counsel struck out the counter claim of the Defendants/Counterclaimant on the ground that the counter claim of the Defendants/Counter Claimants before the Honourable Court was filed through Late Ogbueshi Martha Oforah. It was further noted that though the Plaintiff sued the named Defendants and late Ogbueshi Martha Oforah, Mrs. Mabel Ejikeme, the Defendants were sued through late Ogbueshi Martha in 2012; after the death of the said late Ogbueshi Martha Oforah and late Mrs. Mabel Ejikeme, the Plaintiff brought an application, sought and obtained the leave of court and amended their pleadings accordingly and now sued the Defendants through Mrs. Nwanagu Nweze. However, on 23/11/2016, the Defendants amended their statement of Defence and counter claim and same was filed on behalf of the Defendants suing through their guardian/next of kin Ogbueshi Martha. The Plaintiff brought motion against the same and the counter claim of the Defendants was struck out for being incompetent because it was filed on behalf of a non juristic person. The Defendants did not appeal against the decision nor take any step to set aside the ruling aside or any order step but proceeded to trial. In the case of Jimoh & ors vs. Akande and Anor (2009)5 NWLR (PT 1135) 549, the court held that a decision of a court whether wrong or right remains valid and subsisting until set aside by a court that has the Jurisdiction to do so. The Supreme Court in Onyebuchi vs. INEC (2002) 4SC (PT.1) 27 held that a decision by a court on an issue, which that court cannot revisit, reopen or reconsider is a final decision on that issue. It does not matter that the decision is made at the interlocutory stage or at the conclusion of the proceedings or that it does not finally determine the merit of the case or the rights and interest of the parties in the case. Therefore, it is my considered view that by the order of this court made on 12/3/2018, striking out the counter claim of the Defendants/Counter Claimants, the Defendants have no counter claim capable of being determined by this Honourable court and I so hold.

On the substantive issues before this court notwithstanding the nonexistent of the counter claim of the Defendants/Counter Claimants before the court, the Plaintiff is entitled to proceed with his claim and prove same. See the case of **Culture Ltd & Anor vs. Akinola (2020) LPELR-522149 CA 58-59 para F-D**. However, assuming without conceding that the Court was wrong in holding that there is no counter claim of the Defendants before this court, this court will still go ahead to consider all the issues raised by the parties herein; the need to do substantial justice was

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what this court took into consideration in considering the issues raised by both parties.

On the substantive issues before this court, I have carefully considered the submissions of the respective counsel for the parties. I have equally evaluated the evidence adduced as well as the Exhibits thereof. The issue in controversy in this suit is simple and straight forward. It is a question of whether or not Plaintiff proved his case on the balance of probability that he is entitled to the relief sought. The law also remains that the Plaintiff who seeks a declaration for title must succeed on the strength of his case and not on the weakness of the defence. Having carefully considered the pleadings and evidence adduced herein. It is not in doubt that the Plaintiff herein seeks a declaratory relief & title to land. Thus, it still behooves on the Plaintiff to prove with credible evidence all the assertions and declaratory reliefs sought in his claim as already stated above.

Generally speaking, the law is trite that a party for a declaratory relief must succeed on the strength of his own case, and not on the weakness of the defence, if any. See the case of *MEMUDU AJIBOYE vs. ALHALI OLAHAJI OLOYEDE ISHOLA* [2006] LPELR-301 [SC].

"A declaratory relief must be proved to the satisfaction of the court notwithstanding default of or any admission in the Defendant's pleading. See the case of Okoye&ors vs. Nwankwo [2014] 15 NWLR [pt. 1429]93.

On issues whether the Plaintiff has absolute right over the properties of late Mr. Iwuchukwu Oforah; whether under the Obosi native law and custom and under the constitution of Nigeria female children are not entitled to share in the landed properties of their late father with the male children; whether the unavoidable circumstances of the birth and the position of the 3rd and 4th Defendants in the family of late Mr. Iwuchukwu Oforah will disinherit them from the share of the properties.

The Plaintiff in this case contended that he is the only surviving son of his father Late Mr. Iwuchukwu Oforah by his 1st wife Late Mrs. Orjiagwu Oforah. And that presently he is the head of the Late Mr. Iwuchukwu Oforah's family. According to him, his late father married three (3) wives in his life time, Late Mrs. Orjiagwu Oforah (his mother), Mrs. Adaobi and Ogbueshi Martha Oforah who is the mother of the 1st and 2nd Defendants. The Plaintiff further averred that, he is the only son begotten by his late father through his 1st wife while the rest of his father's wives begot female children including the Ogbueshi Martha Oforah, the mother of the 1st and

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2nd Defendants and that before his father died in 1961, his compound comprises of his obi and two Mkpukes for his two remaining wives as the 2nd wife Mrs. Adaobi remarried. It was also the evidence of the Plaintiff that late Iwuchukwu Oforah died in 1961 and at his death; late Iwuchukwu was survived by his two wives, the Plaintiff's mother and late Ogbueshi Martha Oforah.

The Plaintiff at paragraphs 8 – 14 of his further statement on oath dated 23/9/2020 averred thus:

7. That Late Mr. Iwuchukwu Oforah before his demise had his compound which comprises of his obi and two mkpukes for his two remaining wives which were situate at Ireh Village Obosi.
8. That Late Mr. Iwuchukwu Oforah died in 1961. At his death, late Iwuchukwu was survived by his two wives, the Plaintiffs mother and late Ogbushi Martha Oforah.
9. That apart from my father's compound which is now in dispute, my father also bought for me and in my name, a portion of land from the Nwasike Family of Okpuno Umuota Village, Obosi as his only surviving son. Deed evidencing the sale is hereby pleaded as a purchase receipt and evidence that the transaction took place.
10. That under Obosi native law and custom, where a man is survived by a male issue and female issues, at his death, his compound devolves on his male issue to own absolutely. That at the death of Mr. Iwuchukwu Oforah his compound at Ireh Village, Obosi devolved on me for inheritance and I inherited same as the surviving male issue.
11. That under Obosi native law and custom, when a man married many wives and one of the wives did not give birth to a male issue, at her demise; her mkpuke will be inherited by the Diokpala.
12. That at the death of late Ogbueshi Martha Oforah, her mkpuke devolves on me for inheritance.
13. That under Obosi native law and custom, the right of the married; daughters is to be accommodated in their father's house whenever the need arise; Under Obosi native law and custom, female children of a man at his death does not share his compound and other landed properties with the males.
14. That between 2003 and 2005, late Ogbueshi Martha Oforah in connivance with the 1st, 2nd Defendants and Late Mrs. Mabel Ejikeme, brought a woman from Nkpor-Uno and claimed that the

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- woman was her wife. The late Ogbueshi Martha Oforah and her daughters did the above without my consent and authority.
15. That the woman who late Ogbueshi Martha Oforah claimed she married from Nkpor-Uno gave birth to the 3rd and 4th Defendants after which they had misunderstanding which led to their separation.
 16. That after the above development, the 1st, 2nd Defendants and late Mrs. Mabel Ejikeme started alleging that the compound of late Mr. Iwuchukwu Oforah which devolves on me at his death in 1961, should be shared between me and the 3rd and 4th Defendants.

that they performed the alleged marriage under the "Nrachi" custom but in another breath contended that the same custom is illegal.

The Defendants in evidence particularly from the testimony of DW1 is clear that late Iwuchukwu Oforah married three wives and that the Plaintiff is his children also. It is also clear that the said late Iwuchukwu Oforah did not take further wives or adopt the 3rd and 4th Defendants or any other person whatsoever. The Defendants' witness DW1 admitted on cross examination that the said marriage of Mrs. Uzoamaka, the biological mother of the 3rd and 4th Defendants was for the sole purpose of them partaking in the sharing of the late Iwuchukwu Oforah compound and properties with the Plaintiff.

The DW1 in her pleadings before the court contended that the said marriage of Mrs. Uzoamaka who gave birth to the 3rd and 4th Defendants was confirmed, proper and valid and in conformity to the custom and tradition of Obosi but in another breath, the said DW1 in paragraph 8 contended that those customs are not only strange and illegal, but also repugnant to natural justice, equity and good conscience.

DW1 testimony in his pleadings before the Court is that the Umuechogu family gave consent and supported the marriage but retracted same during cross examination as she testified that the Defendants met with the "head of the Umuechogu family and he told them that it is good". She further stated that the said marriage between late Martha Onyeisi Oforah and the mother of the 3rd & 4th Defendant was done under Nrachi custom. The evidence of the Defendants through DW1 in effect that her custom allows



a woman to marry another woman to beget children for the dead husband has been shown to be unreliable. And the court is duty bound to treat the evidence of a witness who lied as in the instant case as unreliable, not only on the subject matters proved to be false, but also to reject her entire testimony in the case for want of credibility. See the case of **Daggash vs. Bulama (2004) NWLR (PT. 892) 144**. "a witness who testifies falsely on a matter within his or her personal knowledge, leave no room for any court to credit him or her with the issues before the court. The law is that where the witnesses of a party give conflicting evidence, it is not the duty of the court to choose and pick which to believe; as such evidence is rendered unreliable. See the case of **LASISI AREMU V. ALHAJI LAWAL ADETORO (2007) LPELR-546(SC)**.

From the above, it is a common ground that between the parties in this suit that the property in dispute is the compound of late Iwuchukwu Oforah, the father of the Plaintiff and the present 1st and 2nd Defendants. That the said late Iwuchukwu Oforah married 3 wives but had only one (1) son the Plaintiff surviving him. That the 3rd and 4th Defendants are not the biological children of the Plaintiff's father late Iwuchukwu Oforah and that they were not adopted by him during his life time but that they were born by one Mrs. Uzoamaka who was allegedly married by the 1st and 2nd Defendants' mother Late Ogbueshi Martha Oforah, the original 1st Defendant in this suit with the help of the present 1st and 2nd Defendants sometime between 2003 and 2005 after Plaintiff's father and the father of the 1st and 2nd Defendant died in 1961.

Thus on whether or not the 3rd and 4th Defendants are sons of the Plaintiff's father late Iwuchukwu Oforah by virtue of the alleged marriage between the late mother of the 1st and 2nd Defendants late Ogbueshi Martha Oforah and the said Mrs. Uzoamaka, the biological mother of the 3rd and 4th Defendants and whether they are entitled to share in late Iwuchukwu's compound/ properties.

It is now elementary that male and other children begotten by another woman married to the wife after the death of a man are not children of the man. This custom or tradition has been adjudged to be repugnant to natural justice, equity and good conscience. It cannot stand. Woman marrying a woman is also unknown to statute. The law does not recognize a woman as man or husband. The death of a man terminates his transaction on earth. The children begotten by the other woman are not blood lineage of the



man neither can they by stretch of imagination be considered adopted children either under native law or statute as the man was deceased before their birth. The male children from the strange woman are therefore not entitled to the deceased man's estate.

In the case of **Okonkwo vs. Okagbue** [1994] 9 NWLR [pt. 368] 301; it was held inter alia to the effect that a custom which claims or holds that the children begotten after a man [Okonkwo] is deceased is his [Okonkwo's] children cannot be said to be in good conscience or in accord with public policy and is repugnant to natural justice and equity.

In the circumstance, the court hereby rejects the evidence of DW1 that the alleged marriage between the 1st and 2nd Defendants' mother late Ogbueshi Martha Oforah and the said Mrs. Uzoamaka, the biological mother of the 3rd and 4th Defendants was done under the "Nrachi" custom or any valid custom; the 3rd and 4th Defendants are not the children of late Iwuchukwu Oforah and as such are not entitled to partake in the share of his properties and compound with the Plaintiff and I so hold.

The Plaintiff further averred that his father in his life time also purchased a parcel of land in his name from Nwasike family. The Plaintiff further testified that his father purchased the said parcel of land from Nwasike family for his sole use and in his name. He pleaded EXH A evidencing the purchase of the land in his name. The Defendants contended that the said Exhibit is a forged document. According to them, a cursory look at Exhibit A show that the purchase agreement was made on the 5th day of May 1952 between Uchenna Oforah (PW1) and the vendors while the PW1 was still a minor. And that PW3 in his evidence in court on 18/11/2021 contradicted himself. And that Plaintiff was merely 10 years old when the said Exh. A [was purchased by the Plaintiff. That Plaintiff's witness when he was asked if he took part in the land transaction stated that he wouldn't know if any receipt was issued since he did not take part in the transaction". Then DW1 denied in her written statement on oath that late Iwuchukwu Oforah did not purchase any land whatsoever in the Plaintiff's name or any other person's name whatsoever. The Defendants maintained that the purported Deed pleaded as purchase receipt by the Plaintiff is a forged document and should be discountenanced that the Plaintiff was barely three years old by 1952 and has not learnt how to read and write by then and could not have signed his name as purchaser under the said purported receipt of the land."

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I have carefully considered the evidence led and submissions of the counsel on both sides. It is trite under the Nigerian constitution by virtue of section 42 which prescribes discrimination against a citizen of Nigeria by reason of sex and section 43 of the same constitution of the same constitution which grants every citizen [irrespective of gender] the right to acquire and own immovable property. Again, the custom of depriving a widow who had no male child or a daughter of a deceased from inheriting the immovable properties of her deceased husband or father has been declared repugnant to natural justice, equity and good conscience. See the cases of **Anekwe vs. Nweke** [2014] 9 NWLR [pt. 1412] 398 and **Ukeje vs. Ukeje** [2014] 11 NWLR [Pt. 1418] 384. Thus, any custom which institutionalize discrimination of any sort is liable to be voided for being repugnant to natural justice, equity and good conscience. This is to say that any custom which deprive a female from inheriting a man's landed property is barbaric and in the circumstance, prayer "f" of the Plaintiff which seeks a declaration that under the Obosi native law and custom, female children are not entitled to share the landed properties of their father is hereby refused; same is barbaric and is accordingly dismissed.

With regard to Exhibit "A", the Defendants alleged forgery which is a crime. It is trite law that in any proceeding, whether criminal or civil where an allegation of commission of a crime is an issue as in the instant case, the allegation must be proved beyond reasonable doubt. See Section 138 [1] of the Evidence Act.

Again, under section 135(1) of the Evidence Act, as amended which provides as follows:-

"If the commission of crime by a party to any proceeding is directly in issue in any proceedings (Civil or Criminal) it must be proved beyond reasonable doubt". Thus above burden placed on the Plaintiff is only discharged when the essential ingredients of the offence or allegation of forgery have been established and the Defendant is unable to bring himself within the defenses or exceptions allowed under the law generally or the statute creating the offence. See the case of **OTEKE vs. A-G BENDEL STATE** (1986) 2NWLR (Pt.24) 648. Thus, "for the Plaintiff to succeed, he must prove:-

That the documents were not in existence before this case

That, the Defendant forged it

That the Defendant knows it to be a forged document.

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That the Defendant knows or had seen the signatures of the parties to the agreement before the forgery; Previous/specimen of the signatures of the parties that signed the alleged forged documents for comparison.

Although the Defendants raised some issues that may necessitate raising of an eye brow and suspicion, at the same time Law is not a matter of speculations and imaginations. The court had at the same time perused Exhibit "A", the Exhibit bears Plaintiff's name and he led evidence that it was his father that purchased same in his name, although, from the dates on the said Exhibit, the Plaintiff was still a minor but I do not think that his being a minor is enough reason for this court to hold that his father did not purchase it in his name and for him without more. To me this is not proof beyond reasonable doubt as provided by law. It is well settled law that, he who assert must prove. The burden of proving the guilt or liability of the Defendant rest squarely on the Plaintiff; See the case of **STATE VS. AJIE (200) 7S.C. (Pt.24)**; **IKO VS. THE STATE (2003) 3 ACLR (Pt.49)**, In the instant case, the Defendants failed to prove beyond reasonable doubt that Plaintiff forged Exhibit "A and it therefore follows that the Plaintiff is the owner of the land of late Mr. Iwuchukwu Oforah bought in his name from the Nwasike family and I so hold.

Thus having held on the authority of **Anekwe vs. Nweke [2014] 9 NWLR [pt. 1412] 398** and **Ukeje vs. Ukeje [2014]11 NWLR [Pt. 1418] 384** to the effect that any custom, in the instant case the Obosi native law and custom, which disentitles female children from share of their fathers' landed properties is repugnant to public policy equity and good conscience, it follows that the female [1st and 2nd Defendant] are entitled to inherit landed property of their father and if that is the case, then the next question will be whether at the death of late Mr. Iwuchukwu Oforah, his compound and Landed properties devolved to the Plaintiff absolutely being the diokpala, head of family and his only surviving son. The said Plaintiff as PW1 deposed thus in his statement on oath as follows:

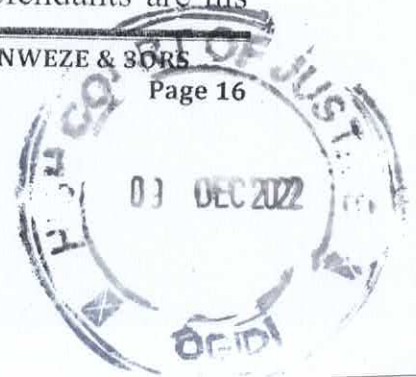
8. That Late Mr. Iwuchukwu Oforah died in 1961. At his death, late Iwuchukwu was survived by his two wives, the Plaintiff's mother and late Ogbushi Martha Oforah.
9. That apart from my father's compound which is now in dispute, my father also bought for me and in my name, a portion of land from the Nwasike Family of Okpuno Umuota Village, Obosi as his only surviving son. Deed evidencing the sale is hereby pleaded as a purchase receipt and evidence that the transaction took place.



10. That under Obosi native law and custom, where a man is survived by a male issue and female issues, at his death, his compound devolves on his male issue to own absolutely. That at the death of Mr. IwuchukwuOforah his compound at Ireh Village, Obosi devolved on me for inheritance and I inherited same as the surviving male issue.
11. That under Obosi native law and custom, when a man married many wives and one of the wives did not give birth to a male issue, at her demise; her mkpuke will be inherited by the Diokpala.
12. That at the death of late Ogbueshi Martha Oforah, her mkpuke devolves on me for inheritance.
13. That under Obosi native law and custom, the right of the married; daughters is to be accommodated in their father's house whenever the need arise; Under Obosi native law and custom, female children of man at his death does not share his compound and other landed properties with the males.
14. That between 2003 and 2005, late Ogbueshi Martha Oforah in connivance with the 1st & 2nd Defendants and Late Mrs. Mabel Ejikeme, brought a woman from Nkpor-Uno and claimed that the woman was her wife. The late Ogbueshi Martha Oforah and her daughters did the above without my consent and authority.
15. That the woman who late Ogbueshi Martha Oforah claimed she married from Nkpor-Uno gave birth to the 3rd and 4th Defendants after which they had misunderstanding which led to their separation.
16. That after the above development, the 1st, 2nd Defendants and late Mrs. Mabel Ejikeme started alleging that the compound of late Mr. IwuchukwuOforah which devolves on me at his death in 1961, should be shared between me and the 3rd and 4th Defendants.

At the trial the Plaintiff testified that he is the only surviving son of his Late father Iwuchukwu Oforah who died in 1961. He testified that his father married three (3) wives in his life time, Late Mrs. Orjiagwu Oforah (his mother) Mrs. Adaobi and Ogbueshi Martha Oforah, the original 1st Defendant and the mother of the 1st and 2nd Defendants.

The Plaintiff also testified that by the custom and tradition of the obosi people the compound of his father devolves to him after the death of his father. The Defendants in evidence particularly from the testimony of DW1 is clear that late Iwuchukwu Oforah married three wives and that the Plaintiff is his only biological son while the 1st & 2nd Defendants are his



biological female children also. It is also clear that the said late Iwuchukwu Oforah did not take further wives or adopt the 3rd and 4th Defendants or any other person whatsoever. The Defendants' witness DW1 admitted on cross examination that the said marriage of Mrs. Uzoamaka, the biological mother of the 3rd and 4th Defendants was for the sole purpose of them partaking in the sharing of the late Iwuchukwu Oforah compound and properties with the Plaintiff.

The 1st and 2nd Defendants in their pleadings before the court particularly through the evidence of DW1 contended that the Plaintiff has always refused and restricted their use and enjoyment of Late Iwuchukwu Oforah's properties and compound and that the plaintiff sought to deprive their late mother her alleged portion of the compound. However, during cross examination, DW1 admitted that the Plaintiff has never interfered, denied or even made any attempt to stop them from using the compound of their late father Iwuchukwu Oforah. DW1 admitted that the alleged marriage of Mrs. Uzoamaka by their aged mother Ogbueshi Martha Oforah and the birth of the 3rd & 4th Defendants was for the sole purpose of sharing the compound and properties of Late Iwuchukwu Oforah between the 3rd and 4th Defendants and the Plaintiff.

On the evidence of DW2, Chief Anthony Ofodile, he stated that he is a member of the Umuecheogu family meeting who arbitrated on the matter between the parties and made Exhibit D and thereafter partitioned late Iwuchukwu Oforah's compound. DW2 testified that himself and members of Umuecheogu family meeting arbitrated made Exhibit D and partitioned late Iwuchukwu Oforah's compound. Upon cross examination, he stated that the partitioning was done immediately after they made Exhibit D and when he was asked that the partitioning was done during the pendency of the suit, he denied same. However, as contended by the Plaintiff the ruling of this Honourable Court shows that the said partition made by the Defendants was made while this suit was made. See the ruling of my learned brother Hon. Justice Ike Ogu on 19/06/2014 on motions filed by the Plaintiff and after considering the counter affidavit of the Defendants and arguments of counsel to both parties before the court. He stated thus:

"Having that at the back of my mind, and a scrutiny of the pleadings of the parties and the processes in this suit, shows clearly that there are triable issues in this suit, as ownership of the compound is in issue. Since there



are triable issues to be determined in this suit, I am of the opinion that the Defendants/Respondents went too far in erecting a wall fence and thereby demarcating the disputed compound despite the pendency of this suit. The act is condemnable for it amounts to trampling on or lowering the integrity or majesty of trial court." This above order and finding of the Court has not been appealed by the Defendants nor has it been set aside by a superior court; So Exhibit D from the above findings was made during the pendency of this suit by a person interested in the matter and as such is liable to be struck out. See section 83(3) of the Evidence Act, 2011 as Amended. The objection of the Plaintiff's counsel in this regard is hereby sustained. Exhibit D is hereby expunged for being admitted wrongly from the record and marked as rejected for offending section 83[3] of the Evidence Act. See also the case of AGBI V. OGBE (2006) 11 NWLR Part 990 at 65. On the powers of court to expunge Exhibit wrongly admitted from its record.

Furthermore, with regard to the Exhibits C, & E which are arbitrations which was adjudged in favour of the Defendants; the Plaintiff contended that parties cannot be bound to the verdict of an arbitration where either of the parties did not consent or continue to consent or submit to the arbitration. He argued that Exhibits C and E were all arbitration verdicts made without proof that the Plaintiff consented, continue to consent or submit to the arbitration bodies. The testimonies of the Plaintiff witnesses, PW1, PW2 and PW3 were that the Plaintiff did not consent to the entire arbitration body in EXH C and E as he never signed any of them.

The evidence adduced herein shows that the Plaintiff did not consent or continue to participate in the said customary arbitration. I have carefully considered the submissions of counsel on both side, it is trite that enforcement of an award made under customary arbitration depends on whether it satisfies certain conditions laid down by the courts not on whether the adverse party has knowledge of the said proceeding and willfully absented themselves. This is so as the court has been enjoined to be wary in holding that a particular customary arbitration has extinguished a party's right to litigate over a matter. As a number of factors like family, alliances, pre knowledge of the subject matter of the dispute etc, may operate to the detriment of one of the parties to the dispute.



Akpata JSC in **Ohiaeri v. Akabeze** [1992] 2 NWLR [pt.221]1 stated the rationale for such caution by the courts in the following words:

"It is a common feature of customary arbitration in a closely knit community that some of the arbitrations, if not all, not only have prior knowledge of the facts dispute, but also have their prejudices and varying interests in the matter, and are therefore sometimes judges in their own cause and are likely to prejudice the issues".

Thus a valid customary arbitration shall therefore contain at least five ingredients to wit:

- [a] That there had been a voluntary submission of the matter in dispute by both parties to an arbitrator or arbitrators:
- [b] That there was an agreement by the parties either expressly or by necessary implication that the decision of the arbitrators would be accepted as final and binding.
- [c] That the arbitration was conducted in accordance with the custom of the parties or their trade or business.
- [d] That the arbitrator or arbitrators reached a decision and published an award and
- [e] That the decision or award was accepted by the parties at the time it was made. i.e. that none of the parties resiled from the decision or award.

The court still on this issue stated thus

"In the instant case the defendants merely pleaded in paragraph 11A that the Oluoha and his cabinet arbitrated over the matter and found in favour of the defendants without pleading the ingredients or incidents of a customary arbitration or that they would be relying on the arbitration as creating estoppels. In a sense therefore the Court of Appeal was in order in holding that it was not enough to state that the parties went to arbitration and that the decision was given and that it was important that the incidents of the relevant custom of the area in respect of the customary arbitration be fully pleaded and given in evidence. I do not think however that these ingredients or incidents vary from one community to another. Three of them which are permanent features of and are regarded as sine qua non to a valid estoppels of customary arbitration are (i) the fact of submissions; (ii) the agreement to be bound and iii) the acceptance of the decision at the time of pronouncement or publication". See also the cases of **AGU.V. IKEWIBE (1999) 3 NWLR (PT. 180) 385;**



EGESIMBA.V.ONUZURUIKE (2002) 15 NWLR (PT. 791) 145;
OKOYE.V. OBIASO (2010) 8 NWLR (PT. 1195) 145.

In the instant case, the Defendants did not plead any of the above ingredients. Thus the evidence adduced herein shows that the Defendants have failed to prove that the decisions or verdict of the customary arbitrations are binding on the parties and thus constitute estoppel against the Defendants. This issue is resolved in favour of the Plaintiff.

Furthermore, the Plaintiff's testimony that the Defendants partitioned the compound of his father was also admitted against the Defendants by the findings in the records of the court by my learned brother Justice Ike Ogu on the 19/06/2014.

Thus having analyzed the evidence adduced herein in this regard, it is my finding that the evidence of the Plaintiff was not assailed in anyway by the Defendants counsel under cross examination no question of substance was asked as to the substance of the evidence given by the Plaintiff or that of the Plaintiff's witnesses PW2 and PW3 including the evidence of PW1 that the Defendants destroyed his provision shop and goods. The evidence of the Plaintiff is unchallenged and the law is trite that evidence which is unchallenged through cross examination nor controverted by other evidence and is not by itself incredible is qualified to be accepted and acted upon by the trial court. See the case of **OMOREGBE V. LAWANI (1980)3-4 SC. 108 AT 11**. The court hereby accepts the unchallenged evidence of PW1, PW2 and PW3.

Thus, having held that the Obosi native law and custom, which disentitles female children from share of their fathers landed properties is repugnant to public policy equity and good conscience, relief A of the Plaintiff succeeds in part and hold that the Plaintiff is entitled to the relief sought in relief "A" except the mkpuke of the late mother of the 1st and 2nd Defendants.

The Plaintiff also seek special and general damages. On what amounts to special damages. Apex court had in plethora of cases stated that special damages are those damages that denote those pecuniary losses which have crystallized in terms of cash and value before trial. Special damages has to be particularized in the pleading and must be strictly proved. See the cases of **FLOOR MILLS OF NIGERIA PLC & ANOR VS. NIGERIA**

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CUSTOMS SERVICE BOARD & ORS [2016] LPELR-41256, IJEBU ODE L. G. A V., ADEDEJI BALOGUN & CO. [1991] 1 NWLR [PT.166] 36. In the instant case, the Plaintiff asserted that he suffered special damages and provided particulars of the said special damages and what constituted the special damages which were summarized in monetary value and amount to the figure he is claiming.

Premised on the above, the claim of the Plaintiffs for special damages succeeds.

Then section 18 [1] of the Evidence Act, where a custom cannot be established as one judicially noticed, it shall be proved by facts. In the instant case the court had carefully considered the evidence adduced by the parties. It is the considered view of this court that.

See also section 167 of the Evidence Act which states that:

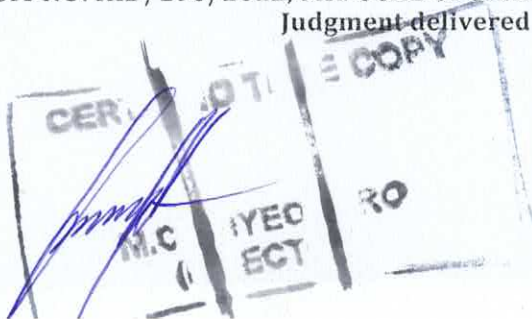
“the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relationship to the facts of the particular case”.

Thus from the averments of the parties in their pleadings and evidence led, it is my finding after evaluating both the oral and documentary evidence of both parties on this issue that the Plaintiff is entitled to his late Iwuchukwu’s compound as the only surviving male son of the said late Iwuchukwu Oforah except the mkpuke of late Ogbueshi Martha Oforah.

In the foregoing, except on relief f, I am satisfied with the evidence adduced by the Plaintiff in proof of his case. On the totality of the evidence presented in this suit, putting the case of the Plaintiff and the Defendants side by side on the imaginary scale of justice, the evidence for the Plaintiff preponderates against the Defendants.

It is therefore with firm conviction that I deduce that:

- The Plaintiff has discharged the burden placed on him to prove with credible evidence that at the death of late Iwuchukwu Oforah, his compound devolved to him [the Plaintiff] as his only surviving son except the mkpuke of late Ogbueshi Martha Oforah.
- The Plaintiff also proved with credible evidence that the Plaintiff’s father late Iwuchukwu Oforah purchased the said land shown in Exh. A



for him and in his name, Defendants failed to prove beyond reasonable doubt that the said document was forged.

- The Plaintiff proved also that 3rd and 4th Defendants are not biological sons of late Mr. Iwuchukwu Oforah and therefore not entitled to inherit his property.

In the circumstances, the claim of the Defendants with the reliefs thereto fails and is accordingly dismissed. The claims of the Plaintiff succeed in part as follows:

1. I hereby declare that at the death of late Mr. Iwuchukwu Oforah, his compound devolved to the Plaintiff being the diokpala, head of family and his only surviving son except the Mkpuke of late Ogbueshi Martha Oforah.
2. I hereby declare that the Plaintiff is the owner of the land of late Mr. Iwuchukwu Oforah bought in his name from the Nwasike family.
3. I hereby declare that the 3rd and 4th Defendants not being the sons of late Mr. Iwuchukwu Oforah are not to partake in the inheritance of his properties.
4. I hereby award the sum of N878, 350 (Eight Hundred and Seventy Eight Thousand Three Hundred and fifty Naira) special damages for the damages carried out by the Defendants to the Plaintiff's shop and properties/ goods.
5. The Defendants their assigns, their privies, heirs, agents are hereby restrained from partitioning or trespassing or in any manner whatsoever interfere with the plaintiff's possessory right over the land now in dispute.



*certification #2000
certification of 20 photos
@ #35.00 per photo*

[Signature]
I.U. NDIGWE
JUDGE
30/11/2022

#8000

APPEARANCES:

Plaintiff present

D.C. Okoye Esq. holding the brief of V. U. Uzochukwu Esq. for the Plaintiff.

C. J. Iredu Esq. for the Defendants.

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