

IN THE HIGH COURT OF JUSTICE EKITI STATE OF NIGERIA
IN THE ISE EKITI JUDICIAL DIVISION
HOLDEN AT ISE – EKITI
BEFORE HIS LORDSHIP HON. JUSTICE M.O. ABODUNDE –
JUDGE
THIS TUESDAY 30TH DAY OF NOVEMBER, 2010

BETWEEN: **SUIT NO. HIS/2/2006**

ALHAJI ABUBAKAR & TOR

V

MTN NIGERIA COMM LTD & TOR

1. ALHAJI ABUBAKAR) PLAINTIFFS
2. PASTOR OGUNLADE)
(Suing for themselves and on behalf of the
entire Olin Onileowo family of Ise - Ekiti)

AND

1. MTN NIGERIA COMMUNICATIONS)
LIMITED) DEFENDANTS
2. MR TAIWO OJO)

1st Plaintiff present

2nd Plaintiff deceased

Defendants absent

O. Kolawole for the Plaintiff

Abiola Olagunju for the 1st defendant

JUDGEMENT

The plaintiffs claim against the Defendants jointly and severally for

1. A DECLARATION that the plaintiffs are the persons entitled to the grant of the statutory right of Occupancy in respect of the parcel of land in dispute, measuring 324 square metres and situate at Ogbon-okin, Ise – Ekiti, Ekiti State where MTN Communications Ltd erected a base station.

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JUDGE CHAMBER
(SUIT NO. HIS/2/2006)
17/02/2010

2. An Order declaring null and void any purported transaction involving the Defendants in respect of the land in dispute.
3. ₦20 Million damages for the trespass committed and still being committed by the Defendants on the parcel of land.
4. PERPETUAL INJUNCTION restraining the Defendants either by themselves their agents, servants, privies and assigns from further trespassing on the land in dispute.

Added to the writ of summons is a 30 paragraph Statement of Claim. On the part of the 1st defendants a 24 paragraph Statement of Defence was filed. The counterclaim is for ₦ 50,000,000.00 (Fifty million naira only) for unnecessarily subjecting the 1st defendant to anxiety, stress and worry over the safety of its Multi - Million naira investments expended on the erection of the cell site.

On his own part the 2nd defendant filed a 27 paragraph Statement of Defence and Counterclaim claiming ₦ 2,000,000 (Two Million naira) as general damages for cost of business loss between the defendants and a sum of ₦1,000,000 (One Million naira) being general damages for the stress, anxiety, emotional and psychological trauma which the various violent and negative actions of the plaintiffs have caused him.

Two witnesses testified for the plaintiff in order to establish their case against the defendants. In his evidence in Chief PW1 stated that the entire

family of Okin Onileowo authorized him and the second plaintiff to institute this action against the defendants.

According to him this action was instituted because the defendants are set to cheat the plaintiff's family and set to treat them as ignorants so their decision to seek solace in Court. He stated that the subject matter of this suit revolves round the land in dispute on which MTN Communications erected their base station.

He traced the ownership of the land to his grandfather Onileowo Okin who later gave the land to his father Ogunlade Okin as an inheritance. That on his father's death ownership was automatically transferred to his children.

He confirmed that sometime in 2003 a man called Abubakar Bakare approached the family for land but that his offer and request was refused. Not quite a few days after the refusal it was noticed that some men were working on the land that Abubakar Bakare requested, but that these men were chased away.

Consequently he met with one man known as I.K who said he was from the MTN office in Bodija to Ibadan discuss over the land, that he demanded compensation of ₦ 2.5 Million and informed the family. He also met with one Mr. Uyi who said he is in charge of MTN properties.

Stating further that on one occasion he took a trip to Kano and on his return he learnt that some officials of MTN came to meet with family members and gave them ₦25,000 (Twenty five thousand naira) as entertainment expenses. This made PW1 to visit the office of the 1st defendant again with the 2nd plaintiff's witness but learnt from the said Mr. Uyi that MTN will invite them for further talks at a later date. Throughout this period the construction work of the base station progressed and MTN failed to honour their promise to the family. Much later officials of MTN informed him that one Taiwo Ojo leased the land in issue to them. He immediately took action by asking his counsel to write to MTN Communications Nigeria Limited. A letter dated 16/5/2005 was written. The letter was admitted as Exhibit A. Another letter was written dated 26/7/05 when no reply was received; this letter was admitted as Exhibit B during proceedings.

He denied that the ₦25,000.00 (Twenty Five thousand naira) given was part of the purchase value of the land in dispute. At some point he confirmed that he got a letter from the counsel to the 2nd defendant but the letter was withdrawn on the grounds that the matter will be resolved amicably. A suit was instituted against the family but a notice of discontinuance was filed consequently suit HIS/3/2005 was struck out. The notice of discontinuance was admitted as Exhibit C during proceedings.

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PW1 tendered a letter that was admitted as Exhibit D in proceedings. The letter contained an offer from the counsel to the 2nd defendant offering ₦ 500,000.00 (five hundred thousand naira) to the family. That he again travelled to Ibadan with the 2nd PW to find out from MTN officials what is going on, only to be told that the land was leased to the 1st defendant by one Mr. Taiwo Ojo that their family rejected the offer of ₦500,000.00 (Five hundred thousand naira) through letter admitted as Exhibit E.

That MTN has since been operating on the land without any hitch and no compensation was paid to the family to date. He added that he has been the secretary of the Okin Onoleowo family since 1993 and that Chief A. Usman was not the Head of family at the time in issue but just one of the members.

During cross examination he confirmed being the Head of the family. He again re-stated that the ₦ 25, 000.00 (Twenty five thousand naira) given to some members of his family was for drinks and entertainment expenses. He confirmed that work started on the land in 2003 and up until 2006 work was still going on. He conceded that he disturbed the workmen on the land in 2003 and up until 2006 work was still going on. He conceded that he disturbed the workmen on the land until he received an appeal from one I.K and a call from Mr. Kingsley that MTN will settle.

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He again stated that Taiwo Ojo is unknown to him and that he has never met him, adding that Bakare Abubakar is not the same as Taiwo Ojo. He agreed that the base station has brought progress to Ise Township but that his family is entitled to be compensated adequately by the 1st defendant.

He stated further that the 2nd defendants are unknown to them and that no receipt was issued by any of his family members indicating that a sum of (₦ 185, 00.00) One hundred and eighty five thousand naira was collected from any MTN official.

That the sum of ₦ 2.5 Million naira he demanded from MTN is a starting point, since he is determined to enter into an agreement to protect the interest of his family at large.

In his own examination in Chief the PW2 corroborated the evidence of PW1 that he is the current head of Okin Onileowo family. He also stated that the 2nd defendant is unknown to him. He denied the sale of land to any Sikirulai and that Bakare Rafiu is also unknown to him. He gave evidence as to how one Mr. Bakare came to the family to tell them that if land is sold to the MTN Communications, that six of their children will be employed, 10 hand sets will be given out to family members etc.

He confirmed that a meeting was held between the MTN officials and their family members and that it was at this meeting that the sum of ₦25,

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000.00 (Twenty five thousand naira) was given to them as entertainment expenses.

He confirmed that when they finally received an offer of N 500,000.00 (Five hundred thousand naira) for the land in dispute the offer was refused and an action was instituted in court.

During cross – examination his evidence as to knowing one Sikirufai was not changed. He denied knowing any body by that name or Rafiu. He said about 30 people in their family were present at the meeting at one Baba Akandiri's house who is one of the elderly members of the family.

Others were Johnson, Mr. Alaba, Mr. Yusuf Akirifabi, Mr. Gbadamosi, Ekundayo, adding that only few of their family members are literate. He corroborated the evidence of PW1 that their counsel was briefed to write a letter to the 1st defendant. He described the family land as being beside and lying at Ansar-Udeen Primary School on Okin Street.

He added that if they had paid N 2.5.Million, they would have prepared a lease Agreement and also demand for other entitlements. He insisted that the land is their inheritance and that the family is desirous of preserving it for their children. He again re-stated that the N 25,000.00 (Twenty five thousand naira) initially given was for entertainment and was not part of the money for the purchase of the land.

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During the cross-examination of PW1 by the counsel to the 2nd defendant – He added that he was initially the secretary of the family before becoming the head of the family since 2002.

Furthermore he added that the land in dispute belonged to their forefathers for well over 140 years. He said that when his grand father died in 1959, his father become the Okin. It was after the death of Musa Ogunbi that he became the secretary of the family. Adding that the demands and nature of his business made him not to show interest in becoming the Okin at that time, but being a secretary to the family he is quite conversant with the transaction and records of the family's activities. He stated that presently he is the custodian of the family property. He stated that the family land is about 2-3 acres and that the family is not in the habit of selling their land to 3rd parties but that rather same is allocated to members of the family for use. He stated that the base station of 1st defendant is on 6588 metres of land which is about 2 Plots of land.

He denied giving the land to the 1st defendants but that they took the land by force and that they have been deceiving him anytime he tried to go and negotiate on behalf of his family at their Bodija Ibadan office.

He again stated how MTN official promised to provide employment for their children, build Schools and hospital, corroborating the evidence of PW2.

That he allowed work to progress on the land because he believed the MTN officials that they will be adequately compensated. He added that while work was going on he was providing support to the workmen by giving them food and water. He again stated that the 2nd defendant is unknown to him. During the cross-examination of PW2 by the counsel to the 2nd defendant he stated that he is an half brother to the PW1 and that he is conversant of all the transactions of the family since year 2000 that before then decisions were made by the previous Head of the family. He stated further that Alhaji Abubakar became Head of family in 2001. He confirmed that Yusuf Akinlabi and Yusuf Okin are the same that he is not literate and that he became the Head of the family since January 2008.

He confirmed that the evidence of PW1 in Court is authentic and true and that he is not aware of anyone called Taiwo Ojo, that is was from MTN officials that they learnt of Taiwo Ojo, He gave the valid address of his house as non-Ise – Ekiti and denied knowing Alhaji Onileowo Mutalib and Amodu Okin but admitted knowing Akinlabi Yusuf. That it was when they

realized that they were being deceived by the MTN officials that the present suit was filed.

DWI in his own evidence stated that by virtue of his position in MTN as the Regional Site Acquisition Team Leader he is responsible for all issues relating to sites for new base stations. He confirmed knowing the plaintiffs and the he also knows the 2nd defendant whom he described as the landlord to MTN.

He stated that the land in dispute was leased to MTN sometime in May 2003. The lease is for 15 years. A letter dated 2nd Mat 2003 written to 2nd defendant was tendered through the witness and same was admitted as Exhibit F.

That on receiving Exhibit A, it was passed to the 2nd defendant since the landed property was leased from him. He confirmed that a delegation of elderly men came to their office at Ibadan to make enquiries about the base station at Ise - Ekiti, that he thereafter informed them that MTN did not buy the property but leased same from Taiow Ojo, adding that all enquiries be made to him.

He denied that MTN is a trespasser on the land since the land was leased by the 2nd defendant to them after been convinced that he is the landlord, that they had quiet enjoyment of the land for 2 years that this suit

be dismissed with adequate compensation for embarrassment caused to MTN whereof they counterclaimed for ₦ 50 Million.

During cross-examination he stated that all negotiations was done with the 2nd defendant. When cross examined by 2nd defendant's counsel, he denied that MTN promised to build Schools and health centre for the plaintiffs. In his own testimony DW2, counsel to the 1st defendant confirmed knowing the plaintiffs when they sued his client sometime in 2006 over their base station at Ansar-Udeen School Ise – Ekiti. He stated that his client has paid his firm a sum of ₦ 500,000.00 (Five hundred thousand naira) being legal fees to prosecute this suit. He asked the court to grant the counterclaim of the defendant by way of special damages on the grounds that the plaintiff's suit is frivolous and unwarranted. In cross-examination he added that the ₦ 50 Million claimed is with particulars.

At the close of the case for the 1st defendant on the 22nd day of February, 2010 the counsel to the 1st defendant made a case for his colleague for the 2nd defendant that he is not in Court because his brief was not perfected, however the plaintiff's counsel urged the Court not to be swayed since it appears the 2nd defendant has never appeared in Court but merely filed statement of defence and counterclaim that this is not enough since evidence must be led to substantiate pleadings.

After giving a thought to the submissions of counsels a well considered ruling was given by the Court see Pg. 644 – 645 of the record of proceedings of the Court of 22/2/2010 in Vol. 5 Civil Record Book.

The ruling of the Court was based on the following reasons:-

1. The plaintiffs have closed their case since 27/5/2008.
2. As at 30/10/08 the Court had asked the counsel to the 2nd defendant to present valid documents to support his claim that the 2nd defendant was overseas receiving treatment none was brought to Court.
3. On 22/2/2010 it was not that the 2nd defendant was receiving treatment abroad but that his brief was not perfected.
4. The totality of the attitude and antecedents of the 2nd defendant and his counsel since hearing commenced on 31/7/07 made the Court to order the case of the 2nd defendant closed, since it has been one excuse or the other for the past 3 years and 4 months to delay the timeous hearing of the case.

The Court ordered the counsel to the plaintiffs and the 1st defendant to prepare file and serve their written briefs the counsel to the 1st defendant was to prepare and serve his written brief on or before 10th March, 2010, while the plaintiff's written brief through counsel must be prepared, filed and served on or before 28th March, 2010, any additional brief by way of response to points of law raised was to have been filed and served on or before 30th day of March, 2010, the day the adoption of addresses was fixed for.

In compliance with the Court's order the learned counsel to the plaintiffs filed and served their address on 29th March and 30th March, 2010 respectively.

On 29th March, 2010, the learned counsel for 2nd defendant through their counsel filed Motion No. HIS/7M/10 asking the court for an order permitting the Court to allow the 2nd defendant/applicant to open his case and call witnesses in support of his statement of defence and counter claim. The JUSUN strike commenced disrupting hearing. Upon resumption the case was fixed for 28/7/2010. On that day no representation was made for the defendants the case was adjourned to 20/10/2010 the plaintiff was represented again there was no representation for the defendants the pending motions i.e HIS/6M/2010 and HIS/7M/2010 were consequently struck out as appropriate for lack of diligent prosecution and the written brief of the plaintiff filed was adopted and judgement reserved till 30/11/2010.

It is interesting to note that the same motion HIS/7M/2010 which was struck out on 20/10/2010 was again re-listed for hearing. See Court's record of 25/11/2010/

I have also taken judicial notice that after a considered ruling on 25/11/2010, the learned counsel to the 2nd defendant smuggled in the written brief of the 1st defendant by counsel dated 22nd November, 2010, with

motion HIS/32M/2010 dated 22 November, 2010 and filed 25/11/2010.

Though the Registrar of Court pointed it to my attention a date for hearing was fixed for the motion to be taken before the judgement is delivered on 30/11/2010 as earlier scheduled.

Knowing fully well that a counsel's address is not a substitute for the evidence of parties before the Court. I have taken liberty to make reference to the said motion in the interest of justice and fair administration of justice at this juncture.

I find it very unsettling and embarrassing to this noble profession that counsels can be playing games with serious cases not minding the far reaching effects it has on the administration of justice. I deem it proper at this juncture to let this issue rest until later when the motion will be taken on its merits.

I will now consider the submissions in the written brief of the learned counsel to the plaintiff. Three issues were highlighted in the written brief of the plaintiffs:-

1. Whether the plaintiffs have by preponderance of evidence discharged the burden of proof in establishing their claim to the reliefs sought.
2. Whether the 1st defendant is entitled to the reliefs sought in the counter-claim.
3. What is the effect of the 2nd defendant failure to call evidence to substantiate averments in his statement of defence and counterclaim?

The learned counsel submitted that the plaintiff is bound to discharge the onus placed on him in law on the strength of his own case and not on the weakness of the defendant's case. See Ayeni V Adesina (2007) & NWLR Also by provisions of S136 and S137 of the Evidence Act the burden of proof lies on the plaintiffs to prove their case.

Referring to the case of EGWA V EGWA (2007) 1NWLR pt (1014) 71 @ 87 – 88, he highlighted the five ways by which the onus of the burden placed on the plaintiffs can be discharged, adding that sufficient proof of one of the ways is enough to grant a declaration of title to a parcel of land.

He submitted that in the instant case the plaintiff has proved title to land by relying on traditional evidence. That the plaintiffs must prove:-

1. Who was the first founder or settler?
2. How it was founded.
3. That intervening succession has been unbroken devolving up to the present plaintiff.

See Ibikunle V Lawani (2007) 3NWLR pt (1022) 589 @ 595 paragraphs C - E he therefore urged the Court to hold that the plaintiffs have by their evidence established their title to the land in dispute.

Urging the Court to note the case of Ajao V Ademola (2005)

ALLFWLR (pt 256) 1239 @ 1264 paragraphs B – C Ration 9 and the fact that the Court cannot grant declaratory relief based on the admission of the defendant.

He urged the Court to hold that the evidence of the plaintiff is weightier and more probable than that of the defendants who filed pleadings but failed to lead evidence to substantiate the pleadings.

That Exhibit D should be an exhibit that substantiates and validates the claim of the plaintiffs, since an offer of ₦ 500,000.00 (Five hundred thousand naira) was made on realizing and admitting that the plaintiffs are the rightful owners of the land in dispute see Ifediorama V Ogbue (1995) SNWLR (pt 395) 352 @ 363 paragraphs D – E. Urging the Court to declare null and void any transaction involving the defendants in respect of the land in issue.

On the issue of trespass which is actionable per se, that once plaintiff has proved exclusive possession then there is no need to proof actual damage for an award in trespass. See Egwa V Egwa (Supra) p. 93 paragraph G – H ration 12 and 13.

On the strength of Echere V Ezirike (2006) 12NWLR (pt 994) 386 @

409 paragraph D. He urged the Court to hold that the plaintiffs are entitled to the sum of ₦20 Million claimed for damages for the trespass committed by the defendants and still being committed by them.

On why the counterclaim of the 2nd defendant should fail, he urged the Court to hold that the failure of the 2nd defendant to give evidence before the Court weakens the case of the 1st defendant. The 2nd defendant did not lead evidence in proof that he actually purchased the land from a member of the plaintiff's family. That not only did the 1st defendant fail to proffer any evidence to establish who the 2nd defendant bought the land from among the plaintiff's family. No document was also tendered to confirm the purchase agreement dated March 1993, that their pleading is deemed abandoned on the strength of IFETA V S.P.D.C Nigeria Limited (2006) 8 NWLR (pt 983) 585 @ 600 – 601 G – B, 607 E.

That if the document had been tendered it will have been to their disadvantage referring to S149 (D) of the Evidence Act.

That the 1st defendant has not specially pleaded and strictly prove their claim for special and general damages totaling (₦ 50,500,00.00) Fifty million and five hundred thousand naira only. No particulars was furnished to justify the claim for ₦ 50 million as special damages. Citing the case of

X.S(Nig) Ltd V Taisei (W.A) Ltd (2006) 15NWLR (pt 1003) 533 @ 537
551 (paragraphs B – E) ration 3 among others.

He urged the Court to hold that the claims of the 1st defendant are unfounded, unsubstantiated and frivolous and same should be dismissed. On what the Court should make of the unsubstantiated pleadings of the 2nd defendant that in the instant case the defendant's failure to give evidence in support of his pleading is to be constructed by the Court that he has accepted the case of the plaintiff and rested his case on the facts adduced by the plaintiff. See Ifeta V S.P.D.C (Nig) Ltd 2006 8NWLR (pt 983) 585 @ 600 – 601, paragraphs G – B, 607 (paragraph E) Ratio 12.

He urged the Court to hold that the 2nd defendant's failure to proffer evidence in support of his pleadings amounts to an abandonment of his case. See E.S.C.S.C V Geoffrey (2006) 18NWLR (pt 1011) 293 @ 306 paragraph C Ratios 4 and 5.

I will now go to the reasoning of the Court. In my persuaded view the following issues are to be resolved by the Court in order to arrive at the justice of this case:-

1. Whether the plaintiffs have discharged the evidential burden placed on them in law to warrant the Court to grant their claims.
2. Whether or not the failure of 2nd defendant to proffer evidence in support of his pleadings amounts to abandonment.

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3. Whether the 1st defendant can succeed in their counterclaim for general and specific damages.

On whether the plaintiff has discharged the evidential burden placed on them in law, it is trite that a plaintiff must succeed on the strength of his own case and not on the weakness of the defence.

In the case of Iroghara V Uformadu 2009 ALLFWLR pt 481 843 SC, where title to land is said to have been derived by grant or inheritance, the pleadings must aver facts relating to the founding of the land in dispute, the persons who founded the land and exercised original acts of possession and persons on whom title in respect of the land has devolved since the first founding.

In the instant case the plaintiffs are laying claim to the land in dispute at Ogbon Okin where the 1st defendant erected its base station as a land derived by inheritance. In paragraphs 6, 7, 8, of their statement of claim dated 29th March, 2006 the plaintiffs aver to facts relating to how the land in dispute was acquired by inheritance.

In furtherance of the pleadings both witnesses for the plaintiff gave evidence consistently as to how the land had been occupied by their grandfather, how it later passed on to their own father Ogunlade Okin. The name of their grandfather was given as Onileowo Okin.

Both witnesses also consistently maintained in their evidence and cross-examination that their family land was not for sale but for preservation for use by family members and that one Abubakar Bakare did approach them sometime in 2003 for part of the land to be sold but this request was declined.

Onus of proof is on the plaintiff in an action for declaration of title to land, it never shifts. Where the land in dispute has devolved on the plaintiff by inheritance he must prove who founded the land, how it was founded and the devolution of the land by unbroken chain of succession down to him.

In the instant case I am of the view that the unbroken chain of succession averred in the pleadings was consistently and sufficiently substantiated in evidence by both plaintiffs' witnesses.

On the other hand the 1st defendant claimed to have leased the land in dispute from 2nd defendant, my question for the DW1 is that by virtue of his position and exposure as a counsel what made him to be convinced that the 2nd defendant was in actual exclusive possession? He did not specify this in his evidence, he merely said that they were convinced that the 2nd defendant was the genuine owner. Based on what reasons or grounds? did he say he bought the land from one of the members of the plaintiff's family? If he did where is the proof? Is he related by ancestral lineage to the family?

DWI admitted having meetings with the plaintiffs over the issue but denied offering any money for the land, exhibit F is most unreliable for the Court in the instant case. How did the 2nd defendant come about title to the land? Where is the lease agreement referred to in Exhibit F? That is the lease agreement purportedly made between the 1st and 2nd defendant? Who witnessed the lease agreement?

Infact exhibit F lends weight and credence to the evidence of the plaintiffs that the land in dispute is situate and lying at Okin Street. It supports their evidence of inheritance and link to Okin family name of Ise – Ekiti.

Exhibits A and B also consistently tallies with the evidence of both PW1 and PW2. It showed that at one time or the other MTN officials were having meetings with the family and work on the base station was allowed to continue believing that the family will be adequately compensated.

In my view it is clear that the plaintiffs have fully discharged the evidential burden placed on them in law by proffering cogent and compelling evidence consistent with the averments in the pleadings and I so hold.

My humble but most persuaded view in the instant case is that the members of family of the plaintiff were deceived by certain members of staff of the 1st defendant.

In the instant case it is not merely of some importance, but it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. True justice must not be defective and no law must be defective in dispensing justice.

I have taken judicial notice of the role and function of telecommunications companies in present times in our nation and the positive impact it has on the socio-economic activities of the people of Ise-Ekiti community, however it is not just for some unscrupulous and unprofessional members of staff of the 1st defendant to take advantage of the goodwill and communal support of the plaintiffs by denying them of their inheritance.

My view is that the Management of the 1st defendant are made up of giants of the Corporate world who would ordinarily frown at cheating the same people who are their subscribers and whose lives they want to impact and improve. In the instant case, it appears that some of their incompetent and unprofessional staff have handled this issue most unfairly and unjustly.

Since the plaintiffs have run to the court for redress; then justice must indeed be done and it must be seen by all to have been done.

On how the Court viewed the attitude of the 2nd defendant in the instant case, especially when cognisance is taken of the fact that though he filed a statement of defence and counterclaim and also entered appearance, he consistently failed to adduce evidence to support his pleadings despite the opportunities that were given to all the parties throughout proceedings. The record of proceedings from 31/7/2007 till date speaks for itself.

Mere averment in a pleading or petition as the case may be proves nothing at all if it is not supported by credible evidence be it oral or documentary, unless such averment is clearly admitted by the opposite party. See Enechukwu V Nnamani 2009 pt 492 ALLFWLR pg 1096 ratio 21, also Nkuma V Odili 2006 ALLFWLR pt 313 pg 24.

In the instant case the same opportunities to be heard were given to all the parties. While the plaintiffs and 1st defendant adduced evidence in furtherance of pleadings the 2nd defendant failed to take and seize afforded opportunities to be heard. The record of proceedings from July 2007 to date speaks for itself.

On many occasions the learned counsel to the 2nd defendant tried to excuse the absence of 2nd defendant on the grounds that he is abroad

receiving treatment? No papers or valid documents were produced as far back as 30/10/08 when the issue was raised this was well after one year after hearing commenced.

After the close of the 1st defendant's case the story changed to non – perfection of brief who is fooling who? The Court is certainly not fooled and is duty bound to recognize cases of clear abandonment of pleadings from genuine cases where a party cannot attend Court for cogent and compelling reasons.

In our Courts fair hearing has been interpreted to be synonymous with fair trial as implying that every reasonable and fair minded person observing the trial and watching the proceeding should be able to come to the conclusion that the Court or tribunal has been fair to all concerned. Since the judge cannot sit in judgement over its case, it will leave the conclusion on fair trial to those who have been observing proceedings from inception to date and the data and information in the record of proceedings.

However the Court will not mince words to say and emphatically too that the 2nd defendant's failure to adduce evidence in the instant case is at his own peril.

In fact the Court doubts very much whether indeed there is anybody bearing the name of the 2nd defendant, this is an issue for national policy in

support of the need for all citizens of this Country to carry a valid identification to prevent this sort of shady transactions, the biometrics of all citizens of this Country should be electronically stored by appropriate authorities e.g Nigerian Police Force, Immigration Department and Customs Department, State Security Services etc.

A person that did not deem it fit to show his face for once in a proceeding of more than 3 years is indeed most irresponsible and in my view put his integrity and credibility on the line going by the nature of issues joined in the instant case.

My view is that the opportunities afforded the 2nd defendant which were willfully and deliberately not seized by him and his counsel amounts to an abandonment of his pleadings and I so hold. Consequently his statement of defence and counterclaim in this instant cannot succeed.

My view is that exhibits C and D strengthens the case of the plaintiff. In fact exhibit D a letter dated 15th July, 2005 from the Chambers of Gboye Gbolagunte & Co to the Chambers of Wale Omotosho strengthens the claim of Okin family to the piece of land in dispute.

Although the land is said to have been bought from the Okin Onileowo family, no document was tendered throughout not even by the witnesses to support this claim. Exhibit F is not even reliable to establish

that there is a prior contractual agreement between the plaintiff and the 2nd defendant before another contractual agreement was entered into by the 1st defendant and 2nd defendant. His pleadings have no legs to stand for it is weak to its very foundations and I so hold.

On whether the 1st defendant can succeed in the counterclaim for general and specific damages, my firm view is that they cannot having failed to establish how they got to the land in dispute convincingly.

In my view the 1st defendant are trespassers, they have not even led evidence to show that they paid for the land in dispute that they obtained a receipt, after which they went into possession. In other words no evidence was led to show that they have an equitable interest on the land.

Trespass to land is a wrongful entry into the land in actual or constructive possession of another. Trespass is rooted or based on exclusive possession or right to possession. As such any unlawful interference however slight amounts to trespass. Albeit in the instant case I am of the view that the construction of a base station on the land of the Okin family is not a slight trespass.

I do not consider the erection of feeder cables, antennas and other telecommunications equipment or items necessary for carrying out its telecommunications business as slight alteration to land. It is a major

construction that has undoubtedly changed the nature and character of the land in dispute.

An adjudged trespasser cannot succeed in his counter-claim and claim for special and general damages and I so hold.

It is trite that issues to be considered in a claim for trespass are:-

1. Whether the plaintiff established his actual possession of the land and
2. Whether the defendant trespassed on it see Anyanwu V Uzowuaka pt 499 2009 ALLFWLR pg 420 ratio 15.

In the instant case I am fully persuaded that the plaintiffs have established actual possession and that the 1st defendant trespassed on it. On the totality of the consideration of the pleadings averred and the evidence adduced to substantiate same I am of the view that the plaintiffs ought to be compensated for the tort of trespass and I deem it fit to declare as follows:-

1. That the plaintiffs are declared as the persons entitled to the grant of the statutory right of occupancy in respect of the parcel of land in dispute, measuring 324 square metres and situate at Ogbon Okin, Ise – Ekiti, Ekiti State where MTN Communications Nigeria Limited erected a base station.
2. That the purported transaction involving the 1st and 2nd defendants i.e MTN Communications Nigeria Limited and the 2nd defendant one Mr. Taiwo Ojo of No 10 Okesha Street, Ado _ Ekiti is null and void and no effect whatsoever.
3. The plaintiffs claim is for ₦20 Million damages in the instant case. I have given considerable thought to the fact that the purpose of an award of damages is to compensate the plaintiff for damage, injury