

In The High Court Of Anambra State Of Nigeria;

In The High Court of Nnewi Judicial Division;

Holden At Nnewi.

Before His Lordship, Mr Justice Vin N. Agbata,

On Tuesday, the ^{4th} 21st day of ^{April} March 2023.

Suit No HN/186 & 197/2021.

Between

Chidi Odogo ----- Plaintiff

And

Arinze Chikwendu }

(A.K.A Arinze Odogo) }

----- Defendant

Judgement

The plaintiff claims, against the defendant, as follows: -

1. Declaration of court that the plaintiff is the person entitled to the statutory right of occupancy with respect to the compound and the surrounding portions of land of the late Chief Chukwuto Okafor Odogo which situates at No 9 St. Peter Claver Road, Okpuno Nnewichi Nnewi town of Anambra State.
2. Injunction restraining the defendant, his agents, servants, and privies from further trespass on the said portion of land.
3. The sum of #50,000,000.00 being damages for trespass.

These are expressed at paragraph 13 of the statement of claim dated and filed on the 20th day of October 2021. There is also the plaintiff's reply to the statement of defence which reply is dated and filed on the 25th day of January 2022. Responding to the aforesaid pleadings

of the plaintiff, the defendant filed the statement of defence dated the 5th day of January 2022 and filed on the 7th day of January 2022. Be that as it may, the defendant had, through Rose Samuel Emeka Odogo and Arinze Samuel Emeka Odogo, instituted suit No HN/197/21 by means of which they claimed as follows: -

1. Declaration of court that the late Samuel Emeka Odogo was the 1st son of the late Chief Chukwuto Okafor Odogo of Ezeobuo Okpuno Nnewichi Nnewi in accordance with the native law and custom of Nnewi people.
2. Declaration of court that the sale of the portion of land of the late Chukwuto Okafor Odogo which situates beside the compound of Ngobros, without the consent of the late Samuel Emeka Odogo, is null and void.
3. Declaration of court that the building of six flats of the late Chukwuto Okafor Odogo, in accordance with the custom, shall be shared amongst the four wives of the late Chukwuto Okafor Odogo.
4. Injunction restraining the defendant, his servants, and/or privies from further trespass on the portions of land aforesaid.
5. The sum of one Million Naira being damages for trespass.

On the 11th day of January 2022, however, the two suits were consolidated and heard together; for the purposes of convenience. Consequently, the plaintiff in suit No HN/186/21 became the plaintiff in the consolidated suits; whilst the defendant therein became the defendant in the consolidated suits. Pleadings being therefore completed, the hearing of the suit started on the 1st day of March 2022; when Chidi Odogo (plaintiff) started testifying as PW 1. According to him, he is the 1st son of the late Chief Chukwuto Okafor Odogo. When, therefore, the said late Chief Chukwuto Okafor Odogo

died, the plaintiff (according to him) inherited his compound situate at No 9 St. Peter Claver Road Okpuno Nnewichi Nnewi, together with other portions of land; in accordance with the native law and custom of Nnewi people.

Be that as it may, according to the plaintiff, the defendant refused to acknowledge the plaintiff's said entitlement. Consequently, the defendant, the father of the defendant (late Samuel Chikwendu), the mother of the defendant, and the other siblings of the defendant; forcibly moved into the compound aforesaid and began unlawfully to occupy same.

In furtherance of the defendant's said spurious opposition to the plaintiff's inheritance and ownership of the land in dispute, (according to the plaintiff) the defendant and his cohorts manufactured a document which they purported to be the last Will and Testament of the father of the plaintiff, Chukwuto Okafor Odogo. The ensuing controversy, however, gave rise to suit No A/31/2013; which, after the whole hug of trial, was decided in favour of the plaintiff on the 12th day of October 2021, to the effect that the plaintiff is the undisputed owner of the land in dispute.

Unfortunately, however, according to the plaintiff, the defendant immediately thereafter, went to the land the subject matter of litigation, and with the aid of hired thugs and hirelings, unleashed wanton destruction of the premises. At the end of the day, after the riotous activities of the defendants and his company thereon, the wall fence round the premises laid flat on the ground; and also the eight bedroom bungalow therein was completely destroyed. Despite the protestations of the plaintiff, the defendant has continued with the said unprovoked acts of trespass on the premises the subject matter of litigation.

At the end of the case for the plaintiff, the defence of the suit started on the 12th day of October 2022; when one Angus Anosike started testifying as DW 1. Thereafter, George Onyekaba also testified in favour of the defendant as DW 2. According to the said Angus Anosike (DW 1), the late Chief Chukwuto Okafor Odogo, who died on the 5th day of September 2011, married four wives; and Eunice (the mother of the late Samuel Emeka Odogo) was the first wife. Be that as it may, there later arose irreconcilable differences between the said late chief Chukwuto Okafor Odogo and his first wife (the late Eunice), which led to their going their separate ways. Consequently, the late Eunice left the marriage and went away; along with her son, the late Samuel Emeka Odogo.

Be that as it may, the late Chief Chukwuto Okafor Odogo, thereafter, brought back the said late Samuel Emeka Odogo and introduced him to the Dim Onukwuli family meeting of the parties as his first son. Consequently, the late Samuel Emeka Odogo lived together with the late Chief Chukwuto Okafor Odogo in the compound (Obi) until the late Chief Chukwuto Okafor Odogo died. Thereafter, the late Samuel Emeka Odogo continued to live in the said compound (Obi), together with the members of his family, until he also died in 2011. When, therefore, the late Samuel Emeka Odogo died in 2019, his first son (Chidi Jasper Odogo), the defendant in the consolidated suits, inherited the premises the subject matter of litigation.

On the other hand and at all times material to this suit, according to the witness, the plaintiff built and lives on the portion of land which the late Chukwuto Okafor Odogo had granted to the plaintiff for his living purposes; away from the compound (Obi), which is now the subject matter of litigation. Unfortunately, however, when the late Chief Chukwuto Okafor Odogo died, the plaintiff started spuriously

to lay claim to the status of the first son of the said late Chief Chukwuto Okafor Odogo and also to the land in dispute.

At the end of the testimony of DW 1, therefore, the said George Onyekaba took the centre stage and testified as DW 2. He then proceeded to assert that the late Chief Chukwuto Okafor Odogo, together with the late Samuel Emeka Odogo, visited him in his Obi; and in the presence of the said late Samuel Emeka Odogo, told him that the late Samuel Emeka Odogo was his first son. According to the witness, therefore, the plaintiff is not the first son of the late Chief Chukwuto Okafor Odogo. Rather, according to him, and on the other hand, the late Samuel Emeka Odogo was the first son.

Consequently, the late Samuel Emeka Odogo lived (together with the late Chief Chukwuto Okafor Odogo) in the compound now the subject matter of litigation; and when he died in 2019, he was buried in the said compound now in dispute. The plaintiff, on the other hand, was granted a portion of land for his living purposes outside of the compound now in dispute; where the plaintiff built and lives. The defendant therefore, according to the witness, was never a trespasser to the land in dispute.

At the end of the respective cases for the parties, counsel addressed the court. That was on the 1st day of February 2023; when counsel adopted their respective written addresses as their submissions before the court. I have, therefore, considered the respective pleadings of the parties, together with the evidence adduced on the basis thereof. I have equally considered the aforesaid written and oral submissions of counsel.

It is all about the question of, as between Chidi Odogo (the plaintiff in the consolidated suits) and the late Samuel Emeka Odogo (the deceased father of the 2nd defendant in the consolidated suits), who

is the 1st son of the late Chukwuto Okafor Odogo. This is the crux of the matter. It seems to me, therefore, that this fundamental issue arose immediately after the demise of the late Chief Chukwuto Okafor Odogo in 2011. At that time, the late Samuel Emeka Odogo (the deceased father of the 2nd defendant in the consolidated suits) was still alive. Unfortunately, however, as death is a necessary end which must come when it must come, he also died in 2019.

To drive home his claims, however, he put forward a document which he claimed was the last Will and Testament of the late Chief Chukwuto Okafor Odogo. The plaintiff, on the other hand, refused to acknowledge the said document as the Will of the late Chief Chukwuto Okafor Odogo. The ensuing controversy, therefore, gave rise to suit No A/31/2013: Chidi Odogo Vs Basil Anosike and five others. It thus becomes instructive to note that the plaintiff in the said suit No A/31/2013 is also the plaintiff in these consolidated suits. On the other hand, the 5th defendant in the said suit No A/31/2013 is the deceased father of the 2nd defendant in these consolidated suits.

The said suit No A/31/2013 went through the whole hug of trial and, on the 12th day of October 2021, judgement was delivered in favour of the plaintiff on record; which judgement is in evidence as exhibit P1. At pages 46 and 47 of the said judgement, the court had the following to say: -

From the evidence oral and documentary before me, it is not denied that the late Odogo was a teacher and therefore very educated. It is in evidence that he named his first child a daughter Nwaemeghe ie first fruit of the womb and in the certificate of baptism of the plaintiff exhibit F, Chief Odogo acknowledged the plaintiff as his first son. ...

There is also evidence which was not denied that the 5th defendant surfaced on the death of the late Odogo and, by the words of DW 2, was chased out. There is also the burial brochure, exhibit C, which listed the wives, children, and grand children including DW 2 and her children and no mention was made of the 5th defendant or his wife or his children.

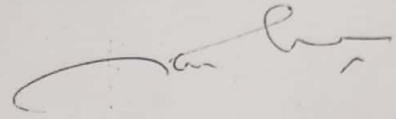
The court then proceeded to order, at page 48 of the judgement (exhibit P1), in the following terms: -

It is also declared that the plaintiff is the first son of the late Chief Chukwuto Okafor Odogo who died intestate and as such entitled to inherit in trust for the other heirs the estate of the late Chief Chukwuto Okafor Odogo in accordance with the native law and custom of Nnewi people.

There is, therefore, no question about it. Unless and until the said judgement (exhibit P1) is set aside on appeal, the plaintiff in the consolidated suits is the undisputed first son of the late Chief Chukwuto Okafor Odogo. Consequently, when his father (the late chief Chukwuto Okafor Odogo) died in 2011, he unquestionably inherited the compound the subject matter of litigation. Consequently, when the defendants in the consolidated suits went into the said compound and demolished the bungalow thereon, they acted as trespassers.

Therefore, the defendants in suit No HN/186/21, their agents, servants and privies are hereby restrained from further trespass on the said compound the subject matter of litigation. The said defendants, jointly and severally, shall pay to the plaintiff the sum of #5,000,000.00 being damages for trespass. The claims of the plaintiffs in suit No HN/197/21, on the other hand, and for the same reasons, are hereby dismissed. Cost of #400,000.00 is awarded

against the defendants in the consolidated suits and in favour of the plaintiff.



Vin N. Agbata,

(Judge)

Kingsley Awuka Esq for the plaintiff in the consolidated suits.

R.O. Amaduche Esq for the defendants.