Lis Pendens: How Oil Companies Spark Disputes in Nigeria: Energia Ltd and Ugboebili

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Abstract:
Fishing in troubled waters appears to be the specialty of oil companies in Niger delta, Nigeria. This study which adopts the doctrinal method is a two-pronged work that looks at the relationship between Energia Ltd, an oil company that got a farm out from Elf Petroleum Ltd as a Local Content vehicle on the Emu-Obodougwa marginal field and the host families of Umu-Ozegbe family of Ogume in an earlier study and Umu-Ugboebili family of Emu-Ebendo in this study. It confronts and interrogates the circumstances that led Energia Ltd into building two huge Palaces for the Okpala Uku and Ada of Emu-Ebendo community on a disputed land which Umu-Ugboebili had lost to Gabriel Mgbonyebi and Ossai Olikili families in Suit Nos. NWACC/11/2011; NWACC/40/2011; NWACC/41/2011 and DCCA/5A/2014; and which the Umu-Ugboebili has tried unsuccessfully to over-turn before the Court of Appeal, Benin-City and currently, Court of Appeal, Asaba in CA/B/374/2014. The study is conducted by looking closely at the facts pleaded by the parties in the cases and the decisions of the courts and the implication of the decisions on the ownership of the two magnificent palaces given the common law doctrine of lis pendens through the cases. The study finds that although Energia Ltd and Ebendo community were clearly aware that Umu-Ugboebili family lost the entire land on which the family resides currently by virtue of the showing of the Litigation Survey Plan No: BENO/DT/2012/DIS/004 they tendered before all the three courts, Energia Ltd still went ahead and acquired the lis pendens from Umu-Ugboebili family and Emu-Ebendo community to build the two Palaces on troubled waters. It finds that Energia Ltd and such other oil companies in the third world are fond of the attitude of not staring clear from disputed lands and investigating unimaginative claims of natives who have been empowered by oil money and are out to undermine competent court decisions and in the process, compound the commensality that predated them on the spaces. It was further found that such moves have threatened traditional institutions and produced unrepentant colonies of natives in communal agitation who are eager to win cases at first whistle by compromising the court of first instance but will not go far in the appeals because of the nature of facts they purvey and the strength of the evidence they ventilate and the caliber of legal representatives they engage. The study recommends that the community liaison offices of the companies be manned by non-natives without biases for their neigbohours with previous acrimonies; and owners of the land such palaces are built in error should occupy them.

Keywords: Nigeria, Energia Ltd, Umu-Ugboebili, Emu-ebendo, Oil and gas, Traditional Institutions and Lis Pendens.
Introduction

Emu-Ebendo is an oil producing community in Ndokwa West Local Government Area of Delta State, Nigeria by virtue of the farm-out which Elf Petroleum Ltd granted to Energia Ltd that turned out to be fruitful and commercial. The community has been at loggerheads with its neighbouring Obodougwa-Ogume community in a dispute over the oil location that Energia Ltd acquired. The dispute came to a head at the Supreme Court when Emu-Ebendo defeated Obodougwa in SC/80/1997 Chief D. M. Okochi & 2Ors v. Chief Amukali Animkwoi & 2 Ors (2004) 114 LRCN 2925 – 2948 before Muhammadu Lawal (Chief Justice of Nigeria), Michael Ekundayo Ogundare JSC, Sylvester Umuru Onu JSC, Aloysius Iyorgyer Kastina-Alu JSC and Niki Tobi JSC delivering the lead Judgment of 28th February, 2003. Since the date the judgment was delivered by the Supreme Court, 28th February every year has become ‘Ebendo National Day’ widely celebrated with pomp and pageantry.

Emu-Ebendo is one of the five communities in Emu clan. The others are: Emu-Unor, Emu-Ebeoma, Emu-Obodeti, and Emu-Iyasele. Having acquired the status of an oil producing community, Ebendo assumed prominence and proclaimed an independent status in so far as oil resource benefit is concerned such that His Royal Majesty, the Ezemu of Emu Kingdom the traditional ruler of all of Emu, resident at Emu-Unor, became sidelined and his kindred from the royal blood line in Ebendo (the Ezemu family) who had fiercely contested the throne with the incumbent ditched him and went on to work for the Palaces of the Okpala Uku and Ada of Emu-Ebendo to be established. Two huge duplex-palaces adjacent to each other have been raised with imposing, magnificent finishing at Ibabu quarters of Emu-Ebendo. Ordinarily, the resources with which the two Palaces were built could have been the seed money with which to build the Palace of the Ezemu of Emu Kingdom at Emu-Unor. But no! The money was entirely royalties from Energia Ltd the marginal field farmer of Elf Petroleum Ltd diverted to or trapped by Emu-Ebendo community to the detriment of Emu-Unor Palace.

But the pitch of this narrative and study is the land on which the two magnificent Palaces for the Okpala Uku and Ada of Emu-Ebendo are located. The land had been in dispute between Umu-Ugboebili family of Emu-Ebendo versus Gabriel Mgbonyebi & 2Ors. The two other defendants are Ossai Olikili who granted a plot measuring approximately 45 feet by 80 feet to Gabriel Mgbonyebi, the father of the third defendant: Friday Mgbonyebi. Only Friday Mgbonyebi is alive at the time of this research. His father and Ossai Olikili are deceased. In an amended claim dated 9th November, 2011 the learned Counsel to Umu-Ugboebili family, C. T. Onyenajua Esq, approached the Ndokwa West Area Customary Court sitting at kwale in NWACC/11/2011 Joseph Ossai & 3Ors v. Gabriel Mgbonyebi & Anor with the following claim against the defendants: ‘An order of the court that the Plaintiffs are entitled under the native law and custom of Emu Kingdom to a grant of Customary Right of Occupancy in respect of all that parcel of land lying and situate at Umu-Ugboebili family land, Ibabu Street, Emu-Ebendo, via Kwale, Ndokwa West Local Government Area, Delta State Nigeria; and for an order of forfeiture against the 1st defendant in favour of the Plaintiffs. The sum of N500,000.00 only as general and special damages. An order of perpetual injunction restraining the defendants by themselves or through their agents, servants and or privies howsoever from trespassing, interfering with the Plaintiff’s land described above.’

On 6th May, 2011 the 1st defendant and his son (Friday Mgbonyebi) took out a counter-claim against the Plaintiffs joining other members of the Umu-Ugboebili family bringing their number to 13 defendants in NWACC/41/2011 Gabriel Mgbonyebi & Anor v. Monday Osogbue & 12Ors as follows: ‘a declaration of title to the Customary Right of Occupancy over that plot of land situate at Ibabu Quarters, Emu-Ebendo where the Plaintiffs reside. Perpetual injunction restraining the defendants from trespassing unto
the land and installing a cassava engine thereon; general damages in the sum of N500,000.00.’ As it turned out to be, the land the counter-claimants placed in dispute is currently sandwiched between the two Palaces of the Okpala Uku and Ada of Emu-Ebendo community. The Okpala Uku and Ada are the oldest male and female native-members of Emu-Ebendo community. They and their respective Councils are under the payroll and maintenance of Energia Ltd. Annually, Energia Ltd doles out a special fund for the celebration of the Ebendo National Day celebration with national and international musicians coming to perform all day and night long.

Yet, on 1st February, 2011 Ossai Olikili and his son, Jeffery Usekwe Olikili approached the same Ndokwa West Area Customary Court, Kwale in NWACC/40/2011 Ossai Olikili & Anor v. Osajeniogo Ossai & 4Ors and took out a writ as follows: ‘Plaintiffs’ claim against the defendants is for the forfeiture by the defendants of all those plots of land which the Plaintiffs granted to the defendants where the defendants have built upon and are residing. General damages in the sum of N500,000.00.’ One significant point in the three-pronged cases in NWACC/11/2011, NWACC/40/2011 and NWACC/41/2011 is that the Umu-Ugboebili family due to obvious financial wherewithal commissioned a Surveyor who produced and appeared in court as their witness and tendered the Litigation Survey Plan No: BENO/DT/2012/DIS/004. It was admitted Exhibit A and the defendants due to obvious lack of financial wherewithal agreed to adopt the survey plan as theirs in the cases and as an accurate representation of the land and the features on it.

The defendants-counter-claimants also tendered a ‘Land Sale Grant Agreement’ dated 3/3/63 through which Ossai Olikili sold the plot measuring 45 feet by 80 feet sandwiched between the two huge Palaces as Exhibit B. They further tendered as Exhibit C, a judgmental extract titled ‘To Whom It May Concern’ dated 16th August, 2007 through which the Palace at Emu-Unor, The Emu Traditional Council of His Royal Highness, The Ezemu of Emu Kingdom on 7th July, 2007 in a ‘Case: Land dispute between Mr. Ossai Olikili (Plaintiff) and Mr. Monday Osogbue (defendant)’ decided ‘(1.) That the area of land in dispute belongs to Ossai Olikili and further encroachment by person(s) is banned. (2.) That since there was no actual proof of trespass against Mr. Monday Osogbue, there was no room to effect any fine/sanction.’ The defendants further tendered as Exhibit D, a Deed of Conveyance between Mr. Paul Usekwe (also called Ossai Olikili) as vendor and the Great Commission and Power Ministry as purchaser covering an area of 100 feet by 50 feet prepared by a Legal Practitioner of note, Barrister A. O. Oyemike of Obodouku (Dominion) Chambers, 20 Isumpe Road, Kwale. Tendered also by the defendants was a Land Agreement dated 21st September, 1982 wherein another plot of 100 feet by 50 feet was sold by Paul Ossai Olikili to Mr. James Uzu of Emu-Ebendo.

It is important to note for instance that since the workings of Energia Ltd on the farm out morphed into commercial venture, Energia Ltd has trained Emu-Ebendo community to believe that they are independent of other sister communities of Emu-Unor, Emu-Ebeoma, Emu-Obodeti and Emu-Iyasele. It looks up to these sister communities with disdain and considers itself as ‘the lion of the tribe of Judea.’ It hardly recognizes the authority of His Royal Majesty of Emu-Unor and Energia Ltd’s empowerment has enabled the fractious and petulant behaviour. It is even mourned by the sister communities that before Energia Ltd came into the live of Emu clan, the five-sister communities were in good terms and relating with each other in ancestral brotherhood and commensality but that since commercial oil erupted from the farm out, things have fallen apart to the extent that job opportunities, scholarships and running contracts are restricted to Emu-Ebendo community only. Even attempts being made by members of sister communities to relocate to Emu-Ebendo are being rebuffed and out-rightly resisted by Emu-Ebendo Community Development Committee.

The members of the sister communities are quick to recall that when they fought the case in SC.80/1997 Chief D. M. Okochi & 2Ors v.
Chief Amukali Animkwoi & 2Ors (2004) 114 LRCN 2924 the entire Emu clan came together and gave the financial, moral and physical push with which the case was fought and won at the Supreme Court with the leading judgment of Niki Tobi, JSC. They claim that even when pushing came to shoving that they had to engage constantly in native wars with Obodougwa-Ogume community, Ebendo usually cries to the entire Emu clan to go out in such campaigns. One Enyabegu of Ogbolum quarters in Emu-Unor, for instance, told the researcher vividly the ‘Emu war god, the Nze deity, at Ogbolum quarters Emu-Unor was constantly and intermittently consulted and must agree to a native war campaign before the entire Emu clan sets out to confront Obodougwa-Ogume.’ It was therefore unbecoming of Energia Ltd and Emu-Ebendo community to believe that the oil was their exclusive right and preserve. Enyabegu volunteered further that it was inappropriate for Ebendo to prop up another ‘Igba war deity at Ebendo’ and that the management of oil wealth and the circumstances of its use should be handled with equanimity because it is always prone to engender fricas, conflict, violence and crises of indelible and generational consequences noting ‘that one day, the well may dry up and what had happen to Olibiri and Shell in Bayelsa State, Nigeria may descend on Ebendo and Obodougwa.’ Enyabegu was also quick to volunteer that the attitude which Energia Ltd and Ebendo is projecting forward to sister members of the five Emu clan is the same attitude that Obodougwa is projecting before other sister communities of Ogume clan namely, Ogbole-Ogume, Ogbe-Ogume, Ogbagu-Ogume, Utue-Ogume, Igbe-Ogume and Umuchime-Ogume communities.

Statement of the Problem

The judgment of the Delta State Customary Court of Appeal, Cable Point, Asaba in DCCA/5A/2014 Joseph Ossai & 12Ors v. Gabriel Mgbonyebi 2Ors delivered by Hon. Justice S. O. N. Ogene, Hon. Justice P. O. Elumeze, Hon. Justice S. O. Torwe (delivering the unanimous judgment) Hon. Justice V. I. Ofesi, Hon. Justice A. E. Ubiri, Hon. Justice Tonbra Tebekaemi and Hon. Justice C. N. Ojughana on 30th May, 2014 went in favour of the defendants in the main suit and the counter-claimant in the counter-suit. Yet, the Plaintiffs in the main suit and the defendants in the counter-claim have granted, transferred a part of the land in dispute to Emu-Ebendo community for the purpose of building two Palaces. Yet, on 13th June, 2014 the Umu-Ogboebili family through their learned Counsel, C. T. Onyenajua Esq. lodged a Notice of Appeal before the Court of Appeal, Benin-City in CA/B/374/2014 Joseph Ossai 12Ors v. Gabriel Mgbonyebi & 2Ors challenging the decision of the Delta State Customary Court of Appeal. After a decade, the appeal to the Court of Appeal has not been fixed or heard. Even as the Court of Appeal, Asaba has been established for Delta State, no sign has appeared that the appeal shall be heard. As it now stands, do the Palaces belong to the Okpala and Ada of Emu-Ebendo? Did the community not know that there has been a litigation over the land before it took a grant of it from Umu-Ugbebili family? Could Energia Ltd not have known that the land it was led into building the two palaces had been in dispute and that there has been a judgment in favour of the opponents of those who donated or sold the land for the construction of the multi-million naira Palaces for the oldest man and woman of Ebendo? It continues to beguile researchers why organizations like Energia Ltd, enlightened communities like Emu-ebendo and litigants like Umu-Ugboebili family with qualified Engineers as leaders and with topnotch legal representatives are deliberate in plodding themselves and other law abiding citizens into interminable disputes.

Conceptual Clarification

Parties to the Disputes

As usual, Energia Ltd was not a party to the disputes between Umu-Ugboebili family and Late Gabriel Mgbonyebi and Late Ossai Olikili families. But it was the funds of the oil company that the disputes were largely prosecuted. Energia Ltd has a great regard for Ebendo
community as such, it is always prepared to hearken to their needs. The fourth Plaintiff, Engineer Henry Anioje, a star witness of the Plaintiffs, is a prominent staff of Energia Ltd and an anchor person in the league of the communal relationship between Energia Ltd and Emu-Ebendo community. Through the relationship, so many corporate social responsibility benefits (sometimes, too numerous to mention) have accrued to the Emu-Ebendo community. All the major roadways and Streets in Emu-Ebendo have been paved with side-walk-ways. Street lights have adorned the entire community. Employment placements for members of the community have also received a huge boost. To state that all the thirteen Plaintiffs work with Energia Ltd or contract for Energia Ltd or receive or sub-contract for the oil company is not an exaggeration. Housing infrastructure for the community is claimed to be about the highest after Kwale and the Global Memorandum of Understanding between Energia Ltd and Emu-Ebendo is taunted on the Ndokwa space to be of international best practices.

But the defendants on the other hand have been stigmatized in the community as troublesome people and ‘enemies of progress.’ Gabriel Mgbonyebi for instance was nearly lynched when motor-truck tire was roped round his neck preparatory to setting him ablaze when he was rescued. He was refused to be buried on the disputed land (sandwiched between the two palatial duplexes build by Energia Ltd for the Okpala Uku and Ada of Emu-Ebendo) that he had lived all his live with his wife and children. His mud house with zinc roof on the land was attacked by the Plaintiffs in the night and demolished shortly after judgment was delivered in his favour by the Delta State Customary Court of Appeal, Cable Point, Asaba. Attempts made by his son, Friday Mgbonyebi, to rebuild and continue to live on the land with his mother and siblings have been vehemently resisted by the Plaintiffs and Emu-Ebendo community.

Late Ossai Olikili on the other hand was also subjected to abject denial by Energia Ltd through the Plaintiffs and Emu-Ebendo community. He was in the category of those who were receiving monthly stipend from Energia Ltd as the oldest members of the community but he was denied the stipend. His son, Engineer Eni Usekwe Olikili, who has HND (Road Engineering Option) from Federal Polytechnic Ado-Ekiti with a Post-graduate Diploma in Engineering, has remained unemployed till date in the face of the huge employment opportunities that Energia Ltd has offered to the Plaintiffs. When Mgbonyebi and Olikili died there was so much mockery in the land against their children by the Plaintiffs who have been visibly empowered by the oil company.

The decision which His Royal Majesty, the Ezemu of Emu Kingdom, Ekpechi Ullu gave in favour of Ossai Olikili against Mr. Monday Osogbue (one of the prominent Plaintiffs) since 7th July, 2007 has continued to be a bugbear against the authority of HRM Ekpechi Ullu in Emu-Ebendo. In order to characteristically suppress His Majesty’s influence in Emu-Ebendo which is one of the five communities under his clan and Kingdom, the Plaintiffs and Energia Ltd have designed the conduct of propping up the Okpala Uku-in-Council and Ada-in-Council as a huge check on the influence and authority of His Royal Majesty. The Okpala Uku and Ada institutions which had been overtaken by the Kingship system in Emu clan and indeed other Ukwuani communities like Ezionum, Kwale, Amai and Umuebu which have instituted their Kingship reigns is being phenomenally and surreptitiously (if not fraudulently) propped up by the Plaintiffs in relation to the judgment against them by the Palace at Emu-Unor over the land in dispute. And whether Energia Ltd is aware of the schemes the Plaintiff and the oil company is playing is a different kettle of fish. But from the facts gathered from the defendants and the observation of the conducts of the parties, particularly the frosty relationship between the King at Emu-Unor on the one hand and Energia Ltd, the Emu-Ebendo community and the Plaintiffs on the other land, it is clear that there is so much love lost between the parties and Energia Ltd is in cahoots with the Plaintiffs against the defendants and His Royal Majesty.
due to the decision of 7th July, 2007 and 30th May, 2014.

Theoretical Framework

Theory of Lis Pendens

The doctrine of lis pendens postulates that 'property which is subject matter of a suit shall not be transferred during pendency of the suit.' It is derived from the Latin words 'pendente lite nihil innovature,' meaning that nothing knew must be introduced while litigation or a suit is pending (RK Dewan & Co., 2022). Peters (2018) has a slightly different version of it, 'Ut pendent nihil innovetur' which means that during litigation nothing should be changed. It prohibits the transfer of a disputed property without the consent of the court. The court may however permit the sale of any property being subject matter of litigation depending on the nature and circumstances of the case. In such a case also, the sale must abide by the decision of the court. The origin of the doctrine can be traced to the decision of Lord Justice Turner in Bellamy v. Sabine, 1857 where His Lordship made the following statement, 'this is a doctrine common to law and equity court, which I apprehend, on the grounds that if alienation pendent lite was allowed to prevail, it would simply not be possible for any action or suit to be resolved successfully. In any case, the Plaintiff will be responsible for the defendant who alienated the property before the judgment of the decree and must be obliged, according to the same course of action to initiate these proceedings de novo' (Krishna, 2021). Krishna and Chaitravallala suggest that the theory is based on necessity than notice and works to ensure that justice is done to the parties to a dispute.

However, the purpose of the doctrine is also to serve as a red flag notice that there is an on going litigation over the property which may diminish the value of the property in question or affect the interest of the litigants as such the unsuspecting members of the public should be aware (caveat emptor). In Lagos State, as in large cities, when a property is in dispute, the litigants are compelled to register the property at the Registry so that members of the public are sufficiently put on notice not to dabble into troubled waters. The public is also to investigate the property-listed at the Registry before proceeding to conclude deals over them or run the huge risk of being joined into litigation.

The aim of the doctrine therefore is to bring litigation to an end as quickly as possible as it is in the interest of the State that litigation should be brought to an end. It is thus to avoid endless litigation, protect either of the parties to the litigation and the public or third parties who may be unaware that there is a litigation over the property and most importantly, to avoid abuse of court process (Architi, 2020). However certain conditions must co-exist before the doctrine can apply such as that, a suit or proceeding is pending or in existence; it is brought before a competent court within the jurisdiction where the property is located; right to the title of the immovable property is in question (but not moveable property such as shares or money); there is no collusion; the suit directly affects the rights of the parties; and the property in question is being transferred by either of the parties to the dispute; that the parties in the suit have been served with the originating processes (Peters, 2018 & Krishna, 2021 & Chaitravallala, 2000 - 2023).

In Barclays Bank Nigeria Ltd v. Alhaji Ashiru (1978) 6 – 7 SC 99 the Supreme Court expounded the foregoing co-existence of the conditions when it observed that the object of the suit must be to recover or assert title to a specific property which must be real at the time of the sale or grant of the property, the suit must be pending and must not be collusive. It will therefore not apply where the landed property is not related to the pending suit or not properly described in the pending suit, or the pending suit is collusive or friendly or the property is covered by a mortgage. It does not also apply where the property is transferred by a stranger not party to the pending dispute (Architi, 2020 & Institute of Legal and Management Studies, 2021). However, the law is not as lame as to allow a third party to get hold of the property in dispute and transfer it to a fourth party. The doctrine of standing by
while litigation is pending would also come to the aid of the eventual successful party at the court as the suit or the judgment at the end of the day would be estoppel to the third and fourth parties.

It should be noted further that such transfers are not necessarily void but voidable at the instance of an affected party. The aim of the doctrine therefore is to make the sale ultimately subject to the decision of the court at the end of the litigation. In Akiboye v. Adeko (2011) 6 NWLR (Pt. 1244) 415 it was held that the aim of the doctrine is to ensure that the parties do not fraudulently deal with a property in litigation in such a manner as to render the judgment of the court a nullity and present the court and or the parties with a fait accompli (Peters, 2018). It is therefore the power or the jurisdiction which a court of law acquires over the subject matter in litigation between the parties such that they are prohibited from dealing with the lis in any manner contrary to the wish of court or the power of the court to render a final judgment. In other words, where a property is under litigation intermeddling with it is discouraged or disallowed in order not to overreach or prejudice the parties to the dispute. The broad aim of the doctrine is thus to keep the title to the immovable property intact and unaffected throughout the litigation process such that the party in whose favour the title accrues to at the end of the litigation would enjoy the fruits and profits from the judgment and decrees of the court; and if this is not done, the result of the lis would be rendered nugatory and redundant. Therefore where a third party acquires from a party in litigation, the subject matter of the lis, the third party acquires nothing as such a transfer is ineffectual and ineffective until the final determination of the case by the court to which the dispute has been submitted (Ibekwe-Allagoa, & Institute of Legal and Management Studies, 2021).

The doctrine of lis is akin to an injunction. When parties have submitted their dispute to a court of law, they are enjoined to maintain the status quo. In Enekwe v. I. M. B. Ltd (2006) NWLR (Pt. 1013) 46, (2006) 11 – 12 SC 3 cited with approval in Appeal No: CA/OW/110/2012 Obiorah
consequently the defendant may be prevented from transferring the property to the prejudice of the plaintiff/ appellant. It is thus a shield and at the same time, a sword (Adyasha & Dhiman, 2020).

**Literature Review**

**Umu-Ugboebili Evidence**

One of the issues which Umu-Ugboebili family presented before the trial court was that there was a customary tenancy relationship between them and Gabriel Mgbonyebi, and by extension, his son. In other words, the family was an overlord. PW2 stated, ‘the 1st defendant is a tenant in Umu-Ugboebili family land which land is situated inside Ibabu Street in Emu-Ebendo. At first, my family refused to accept the 1st defendant as its tenant, but later accepted him after a plea from my uncle Kewejiokume Anioje.’ Under cross examination, the PW2 stated, ‘there was no written agreement that the 1st defendant should not build a block house on the disputed land. The agreement that the 1st defendant should be a tenant on our land was also not in writing. I have nothing to show to the court that the 1st defendant paid tribute in respect of the land in dispute. There are no other tenants of ours where the land in dispute is situated.’

PW3 was more direct and vivid when he stated, ‘1st defendant is a customary tenant in our family land and he came to live on that land through my uncle Kwejiokume Anioje. Initially when my uncle introduced the issue of the 1st defendant coming to live on our family land at Ibabu, my family members refused. But after my uncle Kwejiokume Anioje pleaded with them, coupled with drinks and kola nuts (without money the 1st defendant brought) my father then told 1st defendant to be assisting my Uncle Kwejiokume Anioje in doing his farm work and instructed him to put up a mud and not a block house.’ Under cross examination as highlighted by the trial court in its judgment, the PW3 said further, ‘1st defendant accepted to build on the land in dispute the type of house my family asked him to build and the tenancy so granted the 1st defendant was to last until the family determines same by asking the 1st defendant to leave the land in dispute. The agreement the family had with the 1st defendant was to put up a mud house and the said agreement was not in writing. The consideration was to assist Kewejiokume Anioje in tendering his farm. The grant was made in 1979.’

**Evidence of Defendants**

On the other hand, the case of the defendants was put forward by Ossai Olikili and Friday Mgbonyebi. Ossai Olikili Usekwe stated to the trial court as follows, ‘I am the owner of the land in dispute because same was owned by my paternal grand-father: Usekwe. I inherited same from him.’ He then went on to give his genealogy as follows, ‘Adah begat Olikili. Usekwe begot Ada. Onyemejor begot Usekwe, Oji begot Oyemejor. Useh begot Oji. Ebilije begot Useh. Emu begot Ebilije. Olikili begot me. Emu is the founder of Emu clan. 3rd defendant’s father paid for the land when I sold it to him and he built a house on it which building is still on the land till date. This dispute arose when the 1st defendant came to me that the Plaintiffs and Monday Osogbue where claiming the land in dispute. On 7th July, 2007 I summoned Monday Osogbue before the Ezemu-in-Council over the land in dispute. The decision of the Council was that he should not go to the land again as he does not own the land in dispute. I requested for a document, Exhibit B. Adishi Sunday is the Secretary of the Ezemu-in-Council. He signed the document-judgment. Gabriel Mgbonyebi has been on the land for a period of over forty years when the son had not been born. It is in respect of the land in dispute that I summoned Monday Osogbue before the Okpala Uku-in-Council and he was adjudged a trespasser again. I am not dragging the portion I sold to Gabriel Mgbonyebi with him. Ibabu Street is where the land in dispute is located. I admit selling the land in dispute to him, Chief Mejidu was in power in Emu-Ebendo. A document was prepared for the sale and he paid one pound on 3/3/63 Exhibit C.’
Friday Mgbonyebi, the 3rd defendant, equally refuted the customary tenant relationship and claimed that, he knew the land in dispute which was sold to his father by the 2nd defendant (Ossai Olikili). He identified the agreement Exhibit B. The mud house where he and his siblings were born was what led to the case. He molded blocks and started the foundation of the house. Thereafter, Monday Osogbue and his brothers came to him and told him to see them and he went in company of his father and they were told by the Plaintiffs to repurchase the land in dispute from them. His father resisted saying that he had already bought the land from the 2nd defendant and had an agreement. They were asked to go and invite the 2nd defendant who refused to honour the invitation. The Plaintiffs then requested to see the agreement Exhibit C but they declined because it was 2nd defendant who owns Ibabu Street extending up to the cemetery and who gave the land in dispute to even the Plaintiffs and their ancestors. He stated, ‘I am not a serf and my father was not one; myself, and my father testified at the customary arbitration in Exhibit C in the Palace of Ezemu.’

At the trial court, the stronger Plaintiffs triumphed over the weaker defendants due to the financial muscle of the Plaintiffs and the backing they had from Energia Ltd. On appeal to the Delta State Customary Court of Appeal, Hon. Justice Tonwe held as follows, ‘In the case at hand, the defendants-appellants did not agree with the traditional history of the plaintiffs-respondents. The only way to seek the truth is by looking at recent events concerning the land. Firstly, the 1st defendant has been in possession of the land in dispute for over 40 years. When he was disturbed by the plaintiffs, he reported to his vendor, the 2nd defendant who promptly reported the matter to the Ezemu-in-Council … the 4th Plaintiff who is the arrow head of the Plaintiffs settled for customary arbitration and 4th plaintiff was asked not to disturb the defendants on the land. The Plaintiffs have not exercised any act of ownership over the land for over 40 years. Consequently, the Plaintiffs cannot prevail over the defendants who must succeed as they are entitled to customary right of occupancy over the land in dispute.’

Completely devastated by the judgment, the Plaintiffs took to violence and refused the 3rd defendant the right to bury the 1st defendant on the land in dispute after being in the mortuary for over four years and disrupted the burial ceremony to the extent that the 1st defendant was buried elsewhere. The Plaintiffs took out an appeal that has been stalled at the Court of Appeal Benin-City. The 3rd defendant sued for damages for the disruption of the burial ceremony before the High Court of Justice, Kwale in HCK/74/2017 Friday Mgbonyebi & Ors v. Osajeniogo Ossai & Ors. The plaintiffs as defendants raised objection to the matter being tried at Kwale and the suit was transferred to High Court of Justice, Ozoro where again, the Plaintiffs as defendants raised objection on the ground that they had appeal against the substratum of the suit to the Court of Appeal,
Benin-City and the Presiding Judge, Justice Enifowema adjourned its ruling on the application sine die pending the final determination of the appeal to the Court of Appeal.

Looking undeterred with the ditch and trench fights with the Plaintiffs the defendants went back to the Area Customary Court, Kwale to resume and continue with the last of the tripartite suits being NWACC/40/2011 wherein they claimed forfeiture against the Plaintiffs in the following terms, ‘Plaintiffs’ claim against the defendants is for forfeiture by the defendant of all those plots of land which the plaintiffs granted to the defendants where the defendants have built upon and are residing. General damages in the sum of N500,000.00.’ It is necessary to highlight the nature of the evidence in NWACC/40/2011 in order to understand how they are intricately connected with NWACC/11/2011 and NWACC/41/2011. On 11th August, 2020 Ossai Olikili stated before the Area Customary Court, Kwale presided over by Orioko Edafe Chehoke Esq, (Chairman), C. A. Ekele and F. O. Mgbekei (Members) as follows, ‘I brought the defendants to court because they entered my land and are claiming it. The land is located at Emu-Ebendo town in Ibabu Street. My grand-father owned the land. He is Ada. Olikili gave birth to me. Ada gave birth to Olikili. Oji gave birth to Oyemejor. Useh gave birth to Oji, Ebrije gave birth to Useh. Emu gave birth to Ebrije. Emu founded Emu-Ebendo.

The defendants came to my father to beg for the land and my father gave them the land to build house. The first person to beg for land is Onita. Ojie the father of 3rd defendant also begged my father for land and my father gave him. Aniebo father of the 2nd defendant came to beg me personally and I gave him. Itie also came to beg me with an agreement. I sold to Gabriel Mgbonyebi with an agreement….I gave to Ogobugwo to build. He did not buy. I sold to Emuabia. I gave to Egoenweugu. The lands I gave out and the ones I sold are all located in one area. I know the size of the land in dispute and I live on the land in dispute. The defendants live on the land in dispute and built their houses there. The defendants were chased out of where they were living previously. When my father was alive, he lived on the land in dispute. My father was Usekwe Onyemejor; his other children all died. I am the only one left of all my siblings. No one has challenged me when I transfer the land. I share boundaries with Uko, Ekeyeje, Umuzemu all of them are families in Emu Ebendo.

Supporting the evidence of his father, Usekwe Jeffery, on 10th September, 2020 continued as follows, ‘I brought the defendants to court because they trespassed into our land and are using force to take it from my father. The land is at Ibabu Street, Emu-Ebendo…In the north we share boundary with Umu-Ezemu family, in the south we share common boundary with Ekeyeje family. The land measures 1,140 feet by 320 feet with about 73 plots. The following defendants built houses on the land without the consent of my father: Anthony Osogbue, Augustine Osogbue and Ejime Anioje etc. Some of the houses have not been completed. The houses were started after we had sued them before this honourable court. Even now, there is a massive development on the land by force by Energia Ltd building two huge palaces on the land for Ebendo community…’

Under cross examination, Usekwe Jeffery stated further as follows, ‘it is true that the land we gave to Gabriel Mgbonyebi has already been litigated before this court and the Customary Court of Appeal and now before the Court of Appeal.’ Friday Ngbonyebi also came as a witness in the trial to state as follows, ‘the 1st plaintiff sold land to my father…at Ibabu Street at Emu -Ebendo. The 1st Plaintiff is my landlord and the 1st Plaintiff is the landlord of the defendants…the defendants beat-up my father that my father should pack out of the house which led to his death…The defendants won the case in this Court then we appealed to the Customary Court of Appeal, Asaba and we defeated them there and they appealed to the Court of Appeal…This is the enrollment of order …Exhibit B.’
tied up the cases together, the defendants got jolted and brought up a motion filed on 15th June, 2021 for an order striking out or dismissing the suit for forfeiture in NWACC/40/2011 alleging procedural defects in that the subject matter is before the Court of Appeal and this court cannot sit on a suit pending before the Court of Appeal, Asaba. The Area Customary Court, Kwale dismissed NWACC/40/2011 on the strength of the motion. The Plaintiffs appealed to the Customary Court of Appeal and the Customary Court of Appeal affirmed the decision of the trial Area Court that the subject matter was pending on appeal before the Court of Appeal in CA/B/374/2014 Joseph Ossai 12Ors v. Gabriel Mgbonyebi & 2Ors.

Conclusion

The conspiracy and the bleeding continue. Energia Ltd has empowered Umu-Ugboebili family to lift the stakes to the Court of Appeal and have left the dispute there since 2014. It is most likely that the matter would be abandoned since what Ossai Olikili and Gabriel Mgbonyebi have got through the court has been given through Energia Ltd and Umu-Ugboebili to Emu-Ebendo community. In the local parlance, ‘what the hen is unable to eat, she scatters.’ The land which was adjudged the property of the children of Ossai Olikili and Gabriel Mgbonyebi has now been seized and converted into a communal property through the instrumentality of the funds made available by Energia Ltd. The decisions of the courts of appeal on the land have been rendered nugatory by the financial will power and machinations of an oil company which dabbles into the controversy of host families. It takes side with the stronger in the community which persists in wrong doing and suppresses the weaker in the community which continues to fight for its rights.

Recommendation

- The Emu-Ebendo community should be made to vacate the land and the premises and the two palaces should be given to the rightful owners of the land.
- Energia Ltd should be made to understand that while dabbling into communal issues it should respect the decisions of courts of law and decisions of traditional institutions.
- The Community Relations Officers of Energia Ltd should engage in proper investigations before commencing community project executions.
- Courts of law should go the extra miles to ensure that their decisions are not thwarted.

References


Cases Cited

Akiboye v. Adeko (2011) 6 NWLR (Pt. 1244) 415

Appeal No: CA/OW/110/2012 Obiorah Omeile v. Total Nig. Ltd. before their Lordships, Agbo, Lokulo-Sodipe and Awotoye, JJCA, delivered on 13th April, 2017


Bellamy v. Sabine, 1857

CA/B/374/2014 Joseph Ossai 12Ors v. Gabriel Mgbonyebi & 2Ors


NWACC/11/2011 Joseph Ossai & 3Ors v. Gabriel Mgbonyebi & Anor

NWACC/11/2011 Joseph Ossai & 12Ors v. Gabriel Mgbonyebi & 2Ors

NWACC/41/2011 Gabriel Mgbonyebi & Anor v. Monday Osogbue & 9Ors
