

IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION,
HOLDEN AT BENIN CITY

BEFORE

HIS LORDSHIP, HON. JUSTICE N. IMOUKHUEDE, JUDGE
ON TUESDAY THE 1ST DAY OF JULY, 2014.

B E T W E E N:

SUIT NO.: B/100/13

PHILOMENA IYARE CLAIMANT

A N D

1. MR. DICKSON OKORO
2. MR. AGBONEBO LUCKY
3. MR.ISREAL
4. MR.HENRY DEFENDANTS
5. MR.EMU
6. MR. LUCKY IGBINOVIA
(Alas One Man's Squared)

J U D G M E N T

This is a Motion on Notice brought pursuant to Order 20 rules 6 and 9 of the Edo State High Court Civil Procedure Rules 2012 praying this Court to enter judgment in favour of the Claimant as per her Writ of Summons in default of defence. The Defendants were served with the Motion by the Court Bailiff on the 27th of February 2014 and they did not respond to the Motion.

Order 20 rule 6 of the Edo State High Court Civil Procedure Rules 2012 provides that :

6. 'In an action for the recovery of land, if the Defendant makes default as mentioned in rule 1, the Claimant may apply for a judgment that the person whose title is asserted in the Writ of Summons shall recover possession of the land with costs.'

9. In all actions other than those in the preceding rules of this Order, if the Defendant makes default in filing a defence, the Claimant may apply to a Judge for judgment and such judgment shall be given upon the Statement of Claim as the Judge shall consider the Claimant to be entitled to.

The Claimant's claim against the Defendants are: A Declaration of this Honourable Court that she is entitled to the customary right of occupancy of all that piece/parcel of Land measuring 150ft x 200ft lying and situate at Ugbighoko, Upper Ekenwan Road, along Deeper Life Camp Ground Road on the left, approaching from Ekenwan Road. MR. EMU'S parcel of Land, HON. GUOBADIA'S Land and another Street/Road in front of MR. MATTHEW IGBINOVIA'S Land behind as contained in the litigation survey plan to be filed during trial.

- a) A Declaration of this Honourable Court that the Defendants trespassed into the Land when they entered same unlawfully.
- b) A Declaration of this Honourable Court that all sales or transfer of the Land in Dispute or part of it to any of the Defendants or any other person or group of persons by the 1st Defendant is null and void.
- c) An Order of this Honourable Court directing the Defendants to deliver up possession of the Land in dispute, vacate same and remove whatever building/structures whether temporal or permanent erected on it.
- d) An Order of this Honourable Court, setting aside all sales/transfer or purported/intended sales/transfer of the Land in dispute or part thereof to the Defendants, any person(s) by the 1st and 6th Defendants.
- e) An injunction restraining the Defendants, their Agents, privies, servants and those claiming through them from further trespass on the Land nor having anything whatsoever to do with it.
- f) The sum of N10,000,000 (Ten Million Naira) as damages suffered by the Claimant when the Defendants unlawfully entered into the Land, erected some structures on it, refused to deliver up possession and vacate same.

As against the 1st Defendant:

- a) An Order of this Honourable Court, directing the 1st Defendant to convey the Legal Estate of the Land covered by DEEDS OF TRANSFER dated 15/1/1999 and 1/12/2000 respectively transferred to her now in dispute by doing all what is necessary to vest legal title on her.

Alternatively as against the 1st Defendant:

- b) The payment of the sum of N10,000,000.00 (Ten million Naira) by the 1st Defendant to the Claimant as damages suffered by her as a result of his refusal to convey the legal estate of the said Land to her.

As against the 6th Defendant:

- a) An Order of this Honourable Court, directing the 6th Defendant to convey the Legal Estate of the Land measuring 100ft x 100ft transferred to her now in dispute by doing all what is necessary to vest legal title on her.

Alternatively as against the 6th Defendant:

- b) The payment of the sum of N5,000,000.00 (Five Million Naira) by the 6th Defendant to the Claimant as damages suffered by her as a result of his refusal to convey the Legal estate of the said Land to her.

As against 1st – 5th Defendants jointly and severally:

a) The payment of the sum of N3,000,000.00 (Three Million Naira) as damages suffered by the Claimant when these Defendants trespassed into her Land and destroyed her 6-Store Room and 3-Bedroom/1 Parlor structure on the Land.

PARTICULARS OF SPECIAL DAMAGES

6-Room-Store Apartment from Foundation to Window Level:

- i. N5,000 (Five Thousand Naira) per day for 28 days for MR. IMASOGIE'S labour = N140,000
- ii. N4,000 (Four Thousand Naira) per Labourer per day multiplied by 4 Labourers for 28 day = N448,000
- iii. 2 double Lorry load of stones/Granites @ N35,000 per Lorry load = N 70,000
- iv. 8 Tippers of sharp Sand @ N28,000 Per Tipper = N224,000
- v. 120 bags of Cement @ N2,000 each = N240,000
- vi. 3 Tankers of Water @ N5,000 per Tanker = N 15,000
- vii. 2,000 Blocks @ N150 each = N300,000

Total = **N1,437,000**

3 Bedroom and Parlor Apartment

- i. N5,000 (Five Thousand Naira) per day for 20 days for MR. IMASOGIE'S labour = N100,000
- ii. N4,000 (Four Thousand Naira) per labourer Per day multiplied by 4 Labourers for 20 days = N320,000
- iii. 2 double Lorry load of Stones/Granites @ N35,000 per Lorry load = N 70,000
- iv. 6 Tippers of sharp sand @ N28,000 per Tipper. = N168,000
- v. 100 bags of cement @ N2,000 each = N200,000
- vi. 2 Tankers of Water @ N5,000 per Tanker = N 10,000
- vii. 1,500 Blocks @ N150 each = N225,000

Total = N1,093,000

Other Items

- i. Digging and plastering of water storage Ground-Tank @ N80,000 = N 80,000
- ii. Clearing and weeding the entire Land Before laying the foundations @ N45,000 = N 45,000
- iii. Feeding of the 5 workers @ N500 per day of work for 48 working days. = N120,000
- iv. 100 Palm trees @ N2,000 per tree = N200,000
- v. 10 Orange trees @ N1,500 per tree = N 15,000
- vi. 10 Guava tree @ N1,000 per tree = N 10,000

Total = N470,000

Grand total = N3,000,000

I have carefully gone through the file and I discovered that the Claimant filed her Writ of Summons on the 6th of March 2013. The 1st Defendant was served on the 3rd of April 2013, 5th Defendant on the 3rd of April 2013, the 2nd Defendant on the 15th of July 2013, the 3rd and 4th Defendants were served on the 15th of July 2013, while the 6th Defendant was served on the 15th of July 2013 by the Court Bailiff. The Defendants did not enter appearance or file any court process to defend the suit in spite of hearing notices issued and served on them on the 22nd of October 2013 by the Court Bailiff.

This is a claim for title to land and falls within the purview of Order 20 rule 6. I therefore give judgment in favour of the Claimant as per her Writ of Summons and make the following orders:

1. A Declaration that the Claimant is entitled to the customary right of occupancy of all that piece/parcel of Land measuring 150ft x 200ft lying and situate at Ugbighoko, Upper Ekenwan Road, along Deeper Life Camp Ground Road on the left, approaching from Ekenwan Road MR. EMU'S parcel of Land, HON. GUOBADIA'S Land and another Street/Road in front of MR. MATTHEW IGBINOVIA'S Land.
2. A Declaration the Defendants trespassed into the Land when they entered same unlawfully.
3. A Declaration that all sales or transfer of the Land in Dispute or part of it to any of the Defendants or any other person or group of persons by the 1st Defendant is null and void.
4. An Order of directing the Defendants to deliver up possession of the Land in dispute, vacate same and remove whatever building/structures whether temporal or permanent erected on it.
5. An order setting aside all sales/transfer or purported/intended sales/transfer of the Land in dispute or part thereof to the Defendants, any person(s) by the 1st and 6th Defendants.
6. An injunction restraining the Defendants, their Agents, privies, servants and those either claiming through them from further trespass on the Land or having anything whatsoever to do with it.

As against the 1st Defendant:

- a) An Order directing the 1st Defendant to convey the Legal Estate of the Land covered by DEEDS OF TRANSFER dated 15/1/1999 and 1/12/2000 respectively transferred to her now in dispute by doing all what is necessary to vest legal title on her.

As against the 6th Defendant:

- b) An Order directing the 6th Defendant to convey the Legal Estate of the Land measuring 100ft x 100ft transferred to her now in dispute by doing all what is necessary to vest legal title on her.

I am unable to award the damages demanded by the Claimant in her Writ of Summons because no evidence was led to support her claim for damages in this Court. In the case of UTC Nigeria Ltd V Samuel Peters 2009 LPELR 8426 the Court of Appeal held Per SAULAWA, J.C.A

"It is trite, that a party claiming damages has an onerous duty or onus to provide the court with sufficient materials required for the assessment of damages.

Thus, where a Plaintiff has failed to provide adequate materials for the assessment of damages in favour thereof, as in the instant case, his claims for damages must fail.....

The law is in indeed trite, that special damages must not only be specifically pleaded by a party, but that they should be proved by cogent evidence of specific losses.'

In the same case Eko JCA further held that :

' Award of damages calls for exercise of judicial discretion. It has to be exercised judicially and judiciously. There must be facts for the proper exercise of the discretion. It is for the plaintiff to prove his relief for the relief to be awarded in his favour.'

In Durosaro Vs. Ayorinde (2005) 126 LRCN 1015 the Supreme Court held that:

This is because pleadings by their nature and character cannot speak. They speak through witnesses and as long as a party refuses or fails to call witnesses to articulate their content, they remain dormant process in the court's file. As a matter of law they are moribund and no court of law is competent to resuscitate".

From the above quoted authorities it is clear that this Court cannot award damages to the Claimant since no evidence was led by her in proof .

Order 20 rule 6 specifically deals with recovery of land and only allows this Court to award costs. I therefore award costs of N100,000 (One hundred thousand naira) in favour of the Claimant.

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HON JUSTICE NOGI IMOUKHUEDE
JUDGE
1/7/2014

O.C. Oside Esq
Claimant's
Counsel