

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

BEFORE HIS LORDSHIP HONOURABLE JUSTICE C. O. IDAHOSA –
CHIEF JUDGE
ON TUESDAY THE 23RD DAY OF FEBRUARY, 2016

BETWEEN:

SUIT NO. B/132/2009

MRS. OSATO EHIGIATOR

í

PLAINTIFF

AND

MR. UDO EDOKPOLOR E. ERHAHON

í

DEFENDANT

J U D G M E N T

This action was filed on 23/2/09. A writ of summons was filed along with a statement of claim. These processes were duly served on the Defendant, on 26/3/09. See the proof of service at page 11 of the case file.

Claimant's claims are as shown in the amended statement of claim filed along with a motion on notice on 28/9/10, which was granted on 8/2/11. The claims are as follows:-

- (a) A declaration of this Honourable Court that she is the owner of that piece/parcel of land measuring 100ft by 200ft lying and situate within ward 43B Oghede/Ivbioba/Ugbighoko Village Area by a valid transfer of same through an agreement to sell.
- (b) A declaration of this Honourable Court that she was and has been in exclusive possession of the said land since she was led into possession by the Defendant.

- (c) The sum of N653,800.00 (Six Hundred and Fifty Three Thousand Eight Hundred Naira) as special damages suffered by her when the Defendant/his Agents entered into the land and destroyed her properties.

SPECIAL DAMAGES

i.	100 bags of cement at N1,500.00 per bag	=	N150,000.00
ii.	14 trips of sharp sand at N11,000.00 per trip	=	N154,000.00
iii.	1 lorry load of granite	=	N 32,000.00
iv.	Molding of 5 inches block at N700.00 per bag For 100 bags of cement	=	N 70,000.00
v.	60 trips of filling sand at N2,500.00 per trip	=	N150,000.00
vi.	Clearing, uprooting of stumps from the land For foundation	=	N 20,000.00
vii.	Digging and laying of foundation for 2-flats		
	a. 10 labourers at N1,000.00 each a day	=	N 10,000.00
	b. 2 bricklayers at N1,500.00 each a day	=	N 3,000.00
viii.	Setting of blocks to D. P. C. level and hiring of Labourers for 12 days		
	3-bricklayers at N1,000.00	=	N 36,000.00
	3-service men at N800.00 per man a day	=	N 28,800.00
	TOTAL	=	N653,800.00

- (d) the sum of N500,000 (five hundred thousand naira) as general damages suffered by the Plaintiff when the Defendant/his Agents trespassed into her land.
- (e) An order for specific performance of the agreement of the transfer of the said piece/parcel of land between the parties
- (f) An order of this Honourable Court setting aside all purported sales if any of the said piece\parcel of land to any person by the Defendant.ö

On 19\1\12, the Claimant and her Counsel were not in court and no reason was advanced for their absence. Consequently the case was struck out.

The suit was relisted on the 27th day of March, 2012. A hearing notice was served on the Defendant after the case was formally relisted. See page 71 of the case file.

The case lingered on until the new Edo State High Court Procedure Rules. Claimant complied with the provisions of the new Rules. All the processes filed by the Claimant i.e. deposition on oath by the claimant and her witness, list of witnesses, list of documents to be relied on and copies thereof, were duly served on the Defendant ó See page 88 for affidavit of service.

However the Defendant did not file any process in reply. In spite of the complete failure of the Defendant to file any process, Claimant on 10/3/14 filed an ex-parte motion seeking leave of court to serve the writ of summons, statement of claim, witness statements on oath, and all other court processes upon the Defendant by substituted service, to wit, by pasting same on the wall of the last known address of the Defendant at No 1, Azeke Street, Off Upper Ugbighoko Road, Benin.

This application was granted on 14/03/14. The order of the court was carried out on 07th August 2014. See page 110 of the case file for affidavit of service.

In support of her claims, Claimant testified on 9/12/14. She adopted her deposition and tendered what she referred to as a Deed of Transfer. The so called deed of transfer is a document evidencing the transaction between the Claimant and the Defendant. Since it is not registered it is regarded and admitted as a receipt for money paid by Claimant and received by Defendant. It was marked as Exhibit A.

Attached to Exhibit A is the Oba's Approval dated 15/1/72 Claimant also tendered a property survey plan of the land in dispute and it is now Exhibit B.

At the end of the testimony of the Claimant, learned Counsel closed her case and later filed a written address which he also adopted.

In the absence of a defence, the level of proof required of the Claimant is minimal proof. Her evidence as to how she acquired the land was unchallenged neither was it controverted.

She got the land from the Defendant. After entering into an agreement with the Claimant and collecting the sum of N350,000 from her, the Defendant let her into possession. Claimant can no longer be challenged by the Defendant over the parcel of land.

I agree with the learned Counsel submission that he has nothing left to transfer or sell to any other person. Any such act is an exercise in futility, the likes of the Defendant are the trouble makers in our otherwise peaceful and orderly

land tenure system. They are greedy and always overreacting, such that after selling a parcel of land, they are ready to sell the same parcel of land to another buyer who is willing to pay a higher price. This action of theirs always pits the two buyers against each other. In this instance, the Defendant is both the seller and the trespasser.

In the absence of any evidence to challenge or controvert what Claimant has said, I accept and believe her evidence in totality.

I therefore find and hold as follows:-

- (1) That Claimant purchased the land in dispute from the Defendant.
- (2) That Defendant gave Exhibits A and A1 to Claimant.
- (3) That Defendant's full name is Udo Edokpolor Edobor Erhahon.
- (4) That Defendant used his middle names i.e. Edobor Erhahon to acquire the land from the Ward, as shown in Exhibit A1.
- (5) That Claimant took possession of the land after the transaction and carried out acts of possession on the land.
- (6) That Defendant damaged the structure erected by the Claimant on the land.

The Claim of the Claimant are unchallenged and I accept them as proved.

Consequently I am satisfied that the Claimant has proved her case on the preponderance of evidence. Judgment is therefore entered in her favour in the following terms.

(a) It is hereby declared that the Claimant is the owner of that piece or parcel of land measuring 100 feet by 200 feet lying and situate within Ward 43B Oghede/Ivbioba/Ugbighoko Village Area which piece or parcel of land is more particularly delineated in Red in the survey plan No. MSC/ED99/341 dated 31/12/1999 and marked as Exhibit B in this proceedings.

(b) It is hereby declared that Claimant has been in exclusive possession since she was let into possession by the Defendant.

I accept and believe in totality the evidence by the Claimant as set out in her deposition, about her claims in special damages. Consequently judgment is entered in her favour in the sum of N653,800.00 against the Defendant.

As for the claim in general damages, I accept the testimony that she was let into possession after making payment of the sum of N350,000 to the Defendant and thereafter she started to build a house on the land before Defendant broke and entered the land and destroyed her structure. She was constrained to come to court, where she has been since 2009. The stress, psychological and physical trauma imposed on her by the Defendant can only be imagined.

In the circumstances, I accept and grant her claims in respect of the sum of N500,000.00 as general damages, against the Defendant.

Consequently judgment is also entered against the Defendant for N500,000.00.

Judgment is also entered in favour of the Claimant in respect to her claim for specific performance. Accordingly the Defendant is hereby ordered to put her in possession without any let or hindrance forthwith.

Claimant final claim is for an order setting aside any and all sales to any person by the Defendant. This court may only make an order against parties before it. It cannot make an order against 3rd parties who may have acquired the land or parts of it for valuable consideration without hearing from them.

In the circumstance the claim in paragraph (f) cannot be granted. It is hereby struck out.

On the whole judgment is entered for the Claimant as set out above. The Claimant is entitled to costs, which is assessed and fixed at N50,000.00 considering the time the case has been in court.

C. O. IDAHOSA
CHIEF JUDGE

23/2/16

COUNSEL

O. C. OSIDE ESQ FOR CLAIMANT.