

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

BEFORE HIS LORDSHIP, THE HONOURABLE JUSTICE V.O. EBOREIME, JUDGE  
SITTING IN HIGH COURT NO. 12, BENIN CITY  
ON THURSDAY, THE 9<sup>TH</sup> DAY OF JUNE, 2016.

SUIT NO: B/326/2012

BETWEEN:

MRS. CHRISTY ASOWATA

í í ..

CLAIMANT

AND

1. SUNDAY DAVID  
2. IYIRIARO AGHATISE

}

í í .

DEFENDANTS

**JUDGMENT**

The Claim of the Claimant against the Defendant at paragraph 8 of the Statement of Claim is as follows:-

- (i) **A DECLARATION** that Plaintiff is the beneficial owner and therefore the rightful person entitled to apply for and be granted a Certificate of Occupancy or Statutory Right of Occupancy over all that parcel of land measuring 1000ft by 850ft bounded by beacon numbers SC/ED K4296ZK, SC/ED K4297ZK, SC/ED K4298ZK, SC/ED K4299ZK, SC/ED K4304ZK respectively situate and being at Ogheghe Village, Ikpoba Okha Local Government Area, Benin City, which said land is well known to both parties in this suit.

- (ii) **AN ORDER** of perpetual injunction restraining the defendant his agents, heirs, servants, privies or any person acting on his behalf and instruction from further trespassing into the aforesaid land or doing anything on the land inconsistent with the plaintiff's proprietary rights.
- (iii) N1, 000,000.00 (One Million Naira) as general damages for the trespass to Plaintiff's land.

The Defendants did not enter appearance and did not take any step to defend the action despite the service of the Writ of summons and several hearing notices on them.

On the 16<sup>th</sup> day of January, 2014, Leave was granted to the Claimant/Applicant to serve the 1<sup>st</sup> Defendant by substituted means after all efforts to serve the 1<sup>st</sup> Defendant had proved abortive. The 2<sup>nd</sup> Defendant was served the Court processes. See page 73, 74, 75 and 76 for Affidavits of Service.

In spite of the service of the Court Processes and several Hearing Notices on Defendants, they did not appear in Court.

On the 3<sup>rd</sup> day of December, 2014, the Claimant opened her case when she testified as C.W.1 without being cross-examined. Her evidence is as follows:

**“I, MRS. CHRISTY ASOWATA**, Female, Nigerian, Oil Miller of No. 7, New Road, Ugbiyoko, Benin City, Edo State, do hereby make oath and state as follows:

1. That I am the Claimant in this case.
2. That I know both 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant in this case.
3. That the 1<sup>st</sup> Defendant ó Mr. Sunday David trespassed into my land.
4. That the 2<sup>nd</sup> Defendant is the incumbent Enogie of Ogheghe-Eresoyan Village, Benin City. He connived with the 1<sup>st</sup> Defendant to trespass into my land.
5. That the late Enogie of Ogheghe-Eresoyan Village, Sapele Road, Benin City, Enogie Iyiriaro Aiwekhoe was the father of 2<sup>nd</sup> Defendant ó Enogie Iyiriaro Aghatise.
6. That the late Enogie Iyiriaro Aiwekhoe at three different occasions transferred parcels of land being and lying at Oromo Stream Village Road, Ogheghe-Eresoyan Village, Sapele Road, Benin City, the subject matter of this action to me.
7. That the first transfer was evidenced and effected by an Agreement dated 30<sup>th</sup> March, 1977. This first Agreement transferred a portion and parcel of land measuring 500ft by 600ft to me.

8. That the second transfer Agreement dated 26<sup>th</sup> April, 1977 and executed by the said Enogie Iyiriaro Aiwekhoe further transferred a parcel of land measuring 300ft by 500ft situate at Oromo Stream Farm Road, Ogheghe-Eroseyen Village to me.
9. That finally a Deed of Transfer dated 4<sup>th</sup> August, 2000 was executed between me and the same Enogie, (Enogie Iyiriaro Aiwekhoe) wherein a plot measuring 400ft by 1200ft situate at the same Ogheghe-Eresoyen Village was transferred to me.
10. That the total parcel/plots of land transferred to me measures 1000ft by 850ft and is bounded by Beacon Nos. EDC 9318, SC/ED K4299ZK, SC/ED K4298ZK, EDC 9317, SC/ED K42972K, SC/ED K4296ZK, SC/ED K4304ZK and EDC 9319 respectively.
11. That it is the same Enogie that transferred the plots of land to me for valuable consideration.
12. That the late Enogie's younger brother, Mr. Vincent Aiwekhoe was a witness in the three transactions and was also the one that demarcated and traced the land for me.
13. That I planted palm trees on the plots/parcel of land that were transferred to me by the Enogie Iyiriaro Aiwekhoe.

14. That the palm trees grew to maturity and I started to harvest them to the knowledge of the Defendants without any interruption whatsoever from them.
15. That the 2<sup>nd</sup> Defendant worked for me as a palm fruit harvester on regular basis in the said land before he became Enogie.
16. That I have since built a processing mill on the land with which I process the products of the palm trees to the knowledge of the Defendants without complaints from them.
17. That there was no disturbance to my possession of the parcel of land measuring 1000ft by 850ft during and throughout the life time of the late Enogie, Iyiriaro Aiwekhoe who transferred the land to me.
18. That I was therefore surprised when in September 2011 after being away from the farm for two weeks, I returned to find that someone had destroyed part of my palm trees and erected a foundation with cement blocks on my land.
19. That I immediately ran to the Enogie's Palace, that is, the 2<sup>nd</sup> Defendant to report what I found on my land.
20. That the 2<sup>nd</sup> Defendant ó Enogie Iyiriaro Aghatise asked me to come back in three days so he could investigate the matter as he was not responsible for the trespass.

21. That after three days, myself and my husband, went back to the Enogie, only for the Enogie to tell us that he did not know who trespassed into my land.
22. That after a month and there was no positive response from the Enogie Palace towards unveiling the identity of the person that trespassed into my land, I went to Independent Television (ITV), Benin City, to place an advert (sic) for a caveat on the land.
23. That an Independent Television (ITV) Reporter followed me to the land where he recorded the damage done to my palm trees and the foundation that was laid therein.
24. That it was while the ITV Reporter was recording the damage, that one Sunday David came out from the crowd that had gathered to say that he was the one that trespassed on the land and that it was the Enogie (the 2nd Defendant) that sold the land to him.
25. That the Independent Television Reporter accompanied by myself and the said Sunday David went to the Enogie's Palace in order to interview the Enogie (the 2<sup>nd</sup> Defendant).
26. That the Enogie refused to see the Reporter but instead spoke through his spokesman.

27. That following the 2<sup>nd</sup> Defendant's demand I paid to him Ninety Two Thousand Naira (N92, 000.00) only, since he said the Surveyors will not enter the bush except I paid the money.
28. That the spokesman stated that the Enogie (the 2<sup>nd</sup> Defendant) wanted me to bring my title documents so that my land could be measured in order to find out if my land was really trespassed into.
29. That the community brought its surveyor while I also brought mine. That a detailed measurement of the land was carried out. It was then found out that my land was not complete. It was short of the 96 plots I originally had. It was not 87 plots and that the portion where the 1<sup>st</sup> Defendant trespassed form part of my land.
30. That my Surveyor produced a property survey of my land.
31. That I also commissioned a Surveyor to produce the litigation survey of the land in dispute.
32. That after the measurement by the surveyors the 1<sup>st</sup> Defendant Sunday David in connivance with the 2<sup>nd</sup> Defendant refused to vacate the land peacefully.
33. That the 1<sup>st</sup> Defendant, instead of vacating my land brought the police to my house to arrest me on allegation of kidnapping but on finding

that it was not true, the police let me go though they did nothing to the complainant.

34. That I am entitled to my claims before this honourable Court and urge Court to grant them.
35. That I depose to this statement in good faith and in accordance with the Oaths laws applicable in Edo State.ö

The evidence of the CW2 is as followsö:

öI, MR. VICTOR OBASOHAN male, Nigerian, of No. 7, New Road, Ugbiyoko, Benin City, Edo State do hereby make oath and state as follows:

1. That I know the Claimant. She is my wife. I also know the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
2. That my wife, the Claimant in this matter negotiated with Enogie Iyiriaro Aiwekhoe, who transferred parcels of land at various times to her.
3. That the Claimant bought the land at three different occasions from the 2<sup>nd</sup> Defendantö's late father ö Enogie Iyiriaro Aiwekhoe ö March 1977, April 1977 and August 2000.
4. That the Claimant commissioned a registered Surveyor who surveyed the land and produced a property survey of the whole plots.

5. That she also commissioned a Surveyor to produce the Litigation Survey of the plots in dispute.
6. That sometime in 2011, after the death of his father, the 2<sup>nd</sup> Defendant ó Enogie Iyiriaro Aghatise, came to meet us (myself and my wife) and requested that we should bring the documents my wife used to acquire the plots of land, subject matter of this suit.
7. That based on the 2<sup>nd</sup> Defendant's request, we made photocopies of the title documents and gave to the 2<sup>nd</sup> Defendant.
8. That sometime after we had submitted the photocopied titled deed to the 2<sup>nd</sup> Defendant, my wife and I did not go to the farm for about two weeks, because my step daughter gave birth to triplets.
9. That upon resuming at the farm, we noticed that the 1<sup>st</sup> Defendant, one Sunday David had encroached on the land.
10. That the 1<sup>st</sup> Defendant, informed us that it was the community that gave the parcel of land to him.
11. That we reported the matter to the 2<sup>nd</sup> Defendant, Enogie Iyiriaro Aghatise, who called for the title deeds covering the land, with the intention of finding out, the dimension of my wife's land and to know whether Mr. Sunday David encroached into the Claimant's land.

12. That the Claimant following the demand made by the 2<sup>nd</sup> Defendant paid Ninety Two Thousand Naira (N92, 000.00) only to the Enogie and his community to enable the Community Surveyor to enter the land and do the Survey.
13. That the Enogie brought his Surveyor, who after surveying the land, found that the dimension of the land as evidenced by the title documents, was not complete.
14. That the survey carried out by the Surveyors, actually revealed that the house erected by the 1<sup>st</sup> Defendant, was actually on my wife's land.
15. That we told the 1<sup>st</sup> Defendant to stop building but he refused. Instead, he arrested the Claimant on the allegation of kidnapping at the State Criminal Investigation Department (CID) Benin City.
16. That the police both at the C.I.D and A.I.G. Office, upon investigation to the land found that the Claimant was in possession and that there are palm trees, borehole, Mill, Well and Piggery etc on the land in question.
17. That there were pressures from the 2<sup>nd</sup> Defendant on my wife to give up and stop pursuing her right to the land, the subject matter of this suit.
18. That the Claimant is entitled to her reliefs before this Honourable Court.

19. That I depose to this statement in good faith and in accordance with the Oaths laws applicable in Edo State.ö

**C. W. 3** ó Surveyor Fatai Olujimi Oduyebo testified on the 15<sup>th</sup> day of February, 2016 as his evidence on oath was deemed properly filed vide a Motion on Notice of the 16<sup>th</sup> day of December 2014. This Motion on Notice with a Hearing Notice issued by this Court was served on the Defendants on the 23<sup>rd</sup> day of December, 2014. (See page 105 for the affidavit of service). In spite of the service on the Defendants, they chose not to come to Court. The evidence of the C.W.3 is as follows:

öI, SUVR F.O. ODUYEBO, MNIS, male, Nigerian, Registered Surveyor of No. 29, Sapele Road, Benin City, Edo State, do hereby make oath and state as follows:

1. That I am the deponent herein.
2. That I am a registered surveyor of more than ten years experience.
3. That sometimes in May 2012 the Claimant commissioned me to produce a property survey of her land situate at Oghehe II Village, Benin City.
4. That the Claimant personally took me to the land for physical inspection.

5. That the Claimant showed me her title documents to the land which were made up of three different Deeds of Agreement between herself and one Enogie Iyiriaro Aiwekhoe, the Enogie of Oghehe ó Erosoyan Village, Benin City.
6. That I carried out the instruction of the Claimant and produced the property plan No.DSS/ED/176/2012 which I lodge with the archive of the Ministry of Land, Survey and Housing, Edo State and subsequently made copies of the property survey for the Claimant.
7. That I depose to this statement in good faith conscientiously believing the content to be true and correct to the best of my information and in accordance with the oath laws applicable in Edo State.ö

Several Hearing Notices and Court Processes were served on the Defendants. See pages 73, 74, 75, 78, 85, 87, 88, 90, 103 and 105.

In spite of all the above, the Defendants did not show up in Court. After the C.W. 3 gave his evidence, the Claimant closed his case and still the Defendants were not forthcoming. The Court then foreclosed the Defendants and adjourned for Address.

On 26<sup>th</sup> day of April, 2016 Learned Counsel for Claimant, F.O. Amenaghawon in company of Uduala [Mrs.] and O.S. Ogbomo, Esq. adopted the

Written Address filed on 25<sup>th</sup> day of February, 2016 and the Court adjourned for Judgment.

In the course of hearing, this Court admitted four documents in evidence as Exhibits and they are as follows:-

- Exhibit ðAö - Transfer agreement dated 30<sup>th</sup> day of March, 1977.
- Exhibit ðBö - Transfer agreement dated 26<sup>th</sup> day of April, 1977.
- Exhibit ðCö - Transfer agreement dated the 4<sup>th</sup> day of August, 2000.

(The Court having cited the originals admitted the photocopies in evidence).

Exhibit ðDö - The property Survey Plan.

COURT:

I have given careful consideration to the case of the Claimant by her Statement of Claim, the prayers therein, the evidence led and the Written Address of Learned Counsel.

The issue for determination in this case is whether the Claimant has discharged the burden of proof placed on her to entitle her to the judgment of this Court.

Order 29 Rule 3 of the High Court Civil Procedure Rules 2012, provides as follows:-

“When a Cause is called for hearing, if the Claimant appears and the Defendant does not appear, the Claimant may prove his claim, so far as the burden of proof lies on him.”

It is trite that he who asserts must prove. In this case two facts emerged. Firstly, it is the Claimant who is asserting, therefore, the burden of proof lies on her. Secondly, in the course of this trial, despite being served with all the Court processes and hearing notices, the Defendants did not put up an appearance. Therefore, the Claimant has a responsibility to prove her case on minimal proof.

The question that naturally follows is this: Has the Claimant proved her case?

In the case of IDUNDUN VS. OKUMAGBA (1976) 10 NSCC Page 445 at page 453 line 42 page 457 line 45, the Supreme Court per Fatayi-Williams, JSC stated five ways to prove Ownership of land and they are as follows:

1. By traditional evidence.
2. By production of documents of title which are duly authenticated.
3. By acts of selling, leasing, renting out all or part of the land, or farming on it or on a portion of it.
4. By acts of long possession and enjoyment of land.

5. By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner of the land in dispute.

Only one of the ways need be prove.

See also CLEMENT ODUNUKWE VS. DENNIS OFOMATA & ANOR .

(2011) Vol. 197 LRCN 175 at 199 per Rhodes Vivour, JSC.

From the evidence led especially by the Claimant herself who testified as C.W.1, the fourth way enumerated above as a way of proving ownership, she testified that from 1977 till sometime in September 2011, she had a long, undisturbed peaceful possession of the land in dispute. This piece of evidence remains unchallenged. Being credible this Court is allowed to accept it on the authority of ALHAJI FATAI ALANI MATANMI & 2 ORS. VS. VICTORIA DADA & ANOR. (2013 Vol. 221 LRCN (Part 2) 223 at 243 per Fabiyi JSC.

The above evidence of long possession is therefore accepted by me.

There is also evidence from the C.W.1 the Claimant at paragraph 13 and 14 of her Statement on Oath that when she acquired the land, she planted palm trees which have grown to maturity and she started harvesting them to the knowledge of the Defendants without any interruption from them. In paragraph 15, she further testified that 2<sup>nd</sup> Defendant worked for her as a palm fruit harvester on regular basis on the said land before he became Enogie.

All these pieces of evidence were never controverted and they go to show acts of enjoyment of the land.

I hold therefore, that the Claimant has by her evidence in Court proved ownership of the land measuring 1000feet by 850feet as described in Exhibit 5Dö, the property Survey Plan by acts of long possession and enjoyment of the land.

At paragraph 18 of the Claimant's Statement on Oath, the Claimant testified that someone destroyed part of her palm trees and erected a foundation with cement blocks on the land and at paragraph 24 of the Statement on Oath she said 1<sup>st</sup> Defendant admitted being the one who trespassed on the land and that it was 2<sup>nd</sup> Defendant who sold the land to him. Earlier at paragraph 15 Claimant's testified that 2<sup>nd</sup> Defendant worked for her as a fruit harvester on the land on regular basis before he became the Enogie.

Again the above pieces of evidence were uncontroverted. It is trite that facts in pleadings or in evidence not denied, challenged or controverted by the Defendants are deemed admitted. See OYEWOLE VS. AKANDE & ANOR. (2009) Vol. 177 LRCN 76 at 99.

In paragraph (ii b) of her claim, the Claimant prayed court for One Million Naira as damages for the destroyed palm trees.

Earlier I have held that Claimant is the beneficial owner of the land in dispute. I hold further that the Claimant is the rightful person entitled to apply for

and be granted a Certificate of Statutory Right of Occupancy of all that parcel of land measuring 1000feet by 850feet including the area in dispute.

Having said so, it is the law that the award of general damages and/or special damages is hinged on different parameters. On the latter form of damages the party claiming it must plead it, particularize it or itemize it. In other words, it must be claimed specifically and proved strictly. See the case of CAMEROON AIRLINES V. MR. MIKE OTUTUIZE (2011) Vol.195 LRCN 198 at 2302 per Rhodes Vivour, JSC.

On the other hand, nominal damages are awardable to a Claimant for trespasses even if no damage or loss is caused and if damage or loss is caused, same is recovered according to general principles. See CHIEF WAHAB GBEMISOLA VS. JOHN BOLARINWA & ANOR (2014) NSCQR Vol. 57 page 510.

The question now is whether in law the Defendants are trespassers. A Defendant who destroys a Claimant's property without lawful authority is a trespasser. Osborne's Concise Law Dictionary 9<sup>th</sup> Edition defines a trespasser as follows:-

öA person who intentionally goes to land in the possession of another without lawful authority.ö

From the above definition and the evidence before Court, I hold that the Defendants are trespassers.

In this case the Claimant did not ask for special damages but general damages of One Million Naira only (N1 Million) for the unlawful acts of trespass carried and by Defendants by cutting down her palm trees and erecting a building on the land.

I am of the view that the Claimant is entitled to the award of damages. This will meet the requirement of justice.

In conclusion, I hold that Claimant is the beneficial owner and therefore the rightful person entitled to apply for and be granted a Certificate of Occupancy or Statutory Right of Occupancy over all that parcel of land measuring 1000ft by 850ft bounded by beacon numbers SC/ED K4296ZK, SC/ED K4297ZK, SC/ED K4298ZK, SC/ED K4299ZK, SC/ED K4304ZK respectively situate and being at Ogheghe Village, Ikpoba Okha Local Government Area, Benin City, which said land is well known to both parties in this suit.

I grant an order of perpetual injunction restraining the Defendants, their servants, heirs, agents, privies and any person acting on their behalf and instruction from further trespassing into the aforesaid land or doing anything on the land inconsistent with the Claimant's proprietary right.

The Defendants are to pay to the Claimant the sum of N500, 000.00 (Five Hundred Thousand Naira) as damages for their act of trespass.

HON. JUSTICE V.O. EBOREIME  
JUDGE  
THURSDAY, 9<sup>TH</sup> JUNE, 2016.

Counsel:

F.O. Amenaghawon, Esq. for Claimant.