

**IN THE HIGH COURT OF JUSTICE EDO STATE OF NIGERIA**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP HON. JUSTICE J. O. OKEAYA-INNEH**  
**(JUDGE) ON THURSDAY THE 30<sup>TH</sup> OF JUNE, 2016**

**SUIT NO. B/496/2000**

**BETWEEN:**

**MRS. FELICIA UNEMIN** ... ò ò ò ò CLAIMANT

AND

**FESTUS OBASUYI OGIAMIEN** ... ò ò ò ò DEFENDANT

**JUDGMENT**

The Claimant filed this suit by a Writ of Summons on the 10<sup>th</sup> of July, 2000 and by his Amended Statement of Claim dated 3/2/16, lists of witnesses and Written Statement on oath; the Claimant claimed thus:-

Whereof the Plaintiff claims against the Defendants as follows:-

- a). A declaration that the Claimant is deemed to have a statutory right of occupancy in respect of the parcel of land situate in ward 33E, Oka-Evbuogo, Benin City, measuring 150 feet by 100 feet.
  
- b). The sum of **₦200, 000.000** as general damages for trespass.

- c). **N3000,000.00** being special damages for the destruction of claimant's cement blocks, cement bags and destruction of sharp sand and gravels.
- d). Perpetual injunction restraining the Defendants, their servants, agents and privies from committing further acts of trespass or doing anything whatsoever that is inconsistent with claimant's right of ownership of the said land.

C.W.1 testified by stating that his name is Jeremiah Unemin, he lives at No. 5, Ehioghae Street, Benin City. He knows the Claimant and that she is his wife. He knows the land in dispute. He also remembers making a written statement on oath in respect of this matter. A copy of the written statement on Oath was shown to him, He identify same and states that he wishes to adopt the written statement on Oath as his evidence in chief in respect of this matter.

### **CLAIMANT'S WITNESS STATEMENT**

I, Jeremiah Unemin Ugege, Male, Christian, Citizen of the Federal Republic of Nigeria of No. 5, Ehioghae street, Benin City do hereby make oath and state as follows:-

1. That I am a car dealer.
2. I know the Claimant, She is my wife. I know the land in dispute.

3. I am in Court because of the land my wife bought from Mr. Isaac Ikhinmwin and J. E. Igbinedion, both of whom are now dead.
4. The land situates at ward 33/E Oka-Evbogo. The land bought from J. E. Igbinedion is 100 feet by 100 feet. The land faces Aziegbe Street. There is also a lane beside the land called Okunbor Lane. When Mr. Isaac Ikhinmwin transferred the land to the Claimant, he gave my wife a receipt evidencing transaction and an Oba's approval. J. e. Igbinedion also gave Claimant Oba approval and a receipt. Since Claimant bought the land, no body challenged her over ownership of same until this hostility.
5. Both messrs J. E. Igbinedion and Isaac Ikhinmwin, took the Claimant to the land in dispute and showed her the boundaries. I was present in that company.
6. After we were shown the land, we began farming on the land; Claimant molded cement blocks on the land in 1994 and started development on the land. Claimant also deposited trips of river sand and granite on the land.
7. The Plaintiff also paid ~~N~~400, 000.00 development fees to Okanevbogo Community Development Association.
8. While development was in progress, Robert Ogiamien, who is the father of the Defendant who now survived his father, arrested

workers on the site by policemen from Ugbekun Police Station, alleging that Claimant did not pay him for the rubber trees on the land.

9. The policemen and some other persons in their company took away the working tools of the labourers, destroyed the blocks, bags of cement and scattered the sand and granite on the land.
10. I went to Ugbekun Police Station to bail the labourers. After investigation, the police advised the Claimant to settle or pay for the rubber trees. The IPO was one Sergeant Paul. As at the time of the incident, the land was plain bush.
11. I went the Claimant to the Defendant's predecessor. Claimant agreed to pay ~~N~~40, 000.00. She made a deposit of ~~N~~10, 000.00 to balance ~~N~~30, 000.00. The Defendant did not issue receipt but promises to do so when full payment is made.
12. When the Claimant and myself went to the Defendant to pay the balance, the Defendant laid claim to the land and instead demanded ~~N~~150, 000.00 for the land.
13. We thereafter complained to the community who advised us to go to Court.
14. That I, Jeremiah Unemin do solemnly and sincerely declared that I make this solemn declaration conscientiously believing the

same to be true by virtue of the provisions of the Oaths Act, 2004.

There was no Cross-Examination and No Re-Examination

C.W.2 testified by stating that his name is Wilson Ikhinmwin, He lives at No. 15, Oka Market Road, Upper sakpenoba, Benin City, Edo State. He is a furniture maker and remembers making a written statement on Oath in respect of this matter. A copy of the written statement on Oath was shown to him, he identifies same and that he wants to adopt the written statement as his evidence in chief before the court. The written statement on Oath of CW2 is hereby reproduced here under: -

#### **CLAIMANT'S WITNESS STATEMENT ON OATH**

I, Wilson Ikhinmwin, Male, Christian, Citizen of the Federal Republic of Nigeria do hereby make oath and state as follows:-

1. That I know one Mr. Isaac Ikhinmwin.
2. He is my father.
3. That I am the eldest surviving son of late Mr. Isaac Ikhinmwin by virtue of which I am seised of the facts to which I now depose.
4. I know the Claimant.
5. That my father is now late.

6. Before he died, he told me certain things regarding the land in dispute and I verily believed him as flows:
7. That my father was a farmer and secretary to the plot allotment committee of Oka-Evbuogo ward 23/E.
8. That sometime in 1977, my late father transferred a piece or parcel of land measuring 50 feet by 100 feet lying and situate at Oka-Evbuogo to the Claimant that in 1975 my father acquired a piece or parcel of land measuring 100 feet by 50 feet situate at OkaEvbuogo Village.
9. That my father was given an Oba approval covering the land after he had compiled or followed the procedure precedent to the grant of such approval under the Benin Customary Land allocation system in force at the time.
10. My late father has a common boundary with Mr. J. E. Igbinedion who also transferred his own land measuring 100 feet by 100 feet to the claimant.
11. After the sale, my father entered into an agreement with the issued the claimant with a receipt evidencing transaction.
12. That the land in dispute is situate at ware 33/E which comprises of Okaevbuogo, Ugbekun and Oka.
13. That before my father transferred the land to the Plaintiff, no one has ever disputed the land with my father.

14. That I, Wilsom Ikhinmwin do solemnly and sincerely declare that I make this solemn declaration conscientiously believing the same to be true by virtue of the provision of the Oaths Act, 2004.

C.W.3, testified by stating that his name is Anthony Edegbe. He lives at No. 21 Ogo Street, Oka 3, Benin City. He knows Mr. Edegbe Igbinedion. He states that Mr. Edegbe Igbinedion is his father and that he is the surviving eldest surviving son of Mr. Edegbe Igdinedion by virtue of which he is seised of the facts of which he depose to.

CW3 stated that he remembers making a written statement on oath in respect of this matter. A copy of the written statement on oath was shown to him. He identifies same and states he wishes to adopt the written statement on oath as his evidence in chief in respect of the matter before this Honourable court.

There was No Cross-Examination and No Re-Examination.

Claimant testified by stating that his name is Mrs. Felicia Unemin. She lives at No. 5, Ehiagbe Street, off Erediauwa, Benin City. She remembers making a written statement on oath in respect of this matter. A copy of the written statement on oath was shown to her. She identifies same and says that she wants to adopt the written statement on oath as her evidence in chief before the court. She also further identifies her further written statement on oath and also states that she wished to adopt same as her evidence before the court. In cause of trial, the following Documents was tendered and marked as follows:-

1. Certified true copy of proceedings from Hon. Justice M. O. Oyanna. Dated 2/11/2015 marked Exhibit A.
2. Certified True Copy of Litigation survey plan prepared by Kpeji dated 1/6/2001 marked Exhibit B.
3. Receipt dated 30/8/1978 marked Exhibit C.
4. Oba's approval dated 13/9/1975 marked Exhibit C1.
5. Document Evidencing Transaction dated 30/12/1977 marked Exhibit D.
6. Oba's Approval dated 6/5/1975 marked Exhibit D1.
7. Receipt for Development levy from OKANE V. BOGO Community Development Association dated 10/4/2000 marked Exhibit E.

There was no Cross-Examination and no Re-Examination.

Learned Counsel for the Claimant stated that the only issue for determination is whether the Claimant has discharged the burden of proof on the balance of probability as to be entitled to judgment.

In his address counsel referred court to the case of **DUNDUN V OKUMAGBA (1976) 9/10 SC AT PAGE 27.** Where the Supreme Court stated the five methods by which ownership of land may be established under the Nigerian jurisprudence. The methods are:-

- a). Traditional Evidence.
- b). Production of documents of title which are duly authenticated.

- c). Acts of selling, leaving, renting out all or part of the land or farming on it or on a portion of it.
- d). Acts of long possession and enjoyment of the land.
- e). Proof of procession 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.

One of the methods may be sufficient.

To prove her case the Claimant called three witnesses and also testified personally. She tendered four documentary Exhibits. The evidence of the witnesses are already before the court. Exhibits A and B are respectively the evidence and litigation survey plan made by Surveyor T.K. Kpeji who, before his death, gave evidence before Hon. Justice M. O. Oyanna (now retired), and was cross examined. The provisions of **Section 39 of the Evidence Act, 2011** having been complied with, Counsel urged Court to act on the evidence of Surveyor T.K. Kpeji (Late) recorded by Hon. Justice M. O. Oyanna and hold that the Claimant has sufficiently identified the land with specificity.

The land was acquired in 1975 through a grant from His Royal Highness, Oba Akenzu II, The Oba of Benin by the Claimant's predecessors in title. At the time of acquisition, The Oba of Benin was the Sole Trustee of all Communal Land in Benin Kingdom before the advent of the land Use Act. CW 2 and CW 3 gave copious evidence that the Claimant's predecessors in title complied with the procedure for acquiring land under the Benin Native Law and Custom. Counsel

referred Court to **OWIE V. IGHIWI (2005) 124 LRCN, PAGE 503 AT 525 – 527; OKEAYA-INNEH V AGIEBOR (1970), ALL NLR PAGE 1.**

In her evidence, the Claimant tendered Exhibits C and D which are the receipts of purchase of land and that she was thereafter put in possession. It is the law that a purchase receipt is recognized in law as evidence of acknowledgment of purchase price. If there are sufficient words in the purchase receipt, like in this case, conveying an agreement and describing the land, it may be held to be in the nature of an agreement for the sale of land. If there is additional evidence that the buyer was led into possession of the land by the vendor, he would acquire an equitable interest which can only be dislodged by a superior title. Counsel referred to **ENADEGHE V EWEKA (2015), ALL FWLR, PART 795; PAGE 328AT335 PARAGRAPHS B – C.**

As there was no counter evidence from the Defendant, Counsel urged Court to hold that the Claimant, by the combined effects of Exhibits C, C1, D and D1, has proved her title.

Counsel submitted that the Claimant claimed special and general damages and further stated that the law is that special damages must be specifically pleaded and strictly proved. Counsel referred Court to **COUNCIL, FEDERAL UNIVERSITY OF TECHNOLOGY, AKUREV AJIDAHUN (2013) ALL FWLR, PART 700 PAGE 1392 PARAGRAPHS E – F.** Counsel submitted that the Claimant specifically pleaded special damages which she suffered at paragraphs 13 and 25 of the extant 2<sup>nd</sup> further amended statement of claim which was strictly proved in her statement on oath and the litigation survey plan. Counsel therefore

urged Court to hold that the Claimant is entitled to special damages of N300, 000.00.

It is Counsel's further submission that the law is trite that general damages are such as the law will presume to be the direct and natural consequence of the action complained of. The award of general damages is discretionary after considering the circumstances of the case. Counsel urged court to exercise its discretion in awarding the Claimant the sum of N200, 000.00 as general damages. Putting the totality of the testimony of both parties on an imaginary scale of justice Counsel argued that it is clear from the evidence given that the evidence of the Claimant is unchallenged and uncontroverted and that since there are no materials to be put on the Defendant's side of the imaginary scale of justice, the scale automatically tilts in favour of the claimant. When the case of a party to case is unchallenged, uncontradicted and uncontroverted as it is in the case of the Claimant, the court seised of such facts ought to give judgment in his favour. Counsel referred to the case of **DELTA STATE AGRICULTURAL DEVELOPMENT PROGRAMME VOFONYE (2008) ALL FWLR PART 402 PAGE 1063 AT PAGES 1090 – 1091 PARAGRAPHS G - A.**

Counsel also referred court to the case of **MANTE C. WATER TREATMENT NIGERIA LTD. V. PETROLEUM (SPECIAL) TRUST FUND (2008) ALL FWLR PART 439 PAGE 499 AT PAGE 533 PARAGRAPHS B - D.**

Counsel submitted that the Defendant, on the other hand, did not give any evidence despite the fact that he was given ample opportunities to present his case and he neglected or refused to do so. When a party to a case has been given an opportunity at ventilating his grievances, but refused so to do, he cannot complain of lack of fair hearing. Counsel referred court to **PETERSIDE V. PEPPE (2008) ALL FWLR PART 439 PAGE 455 1703 AT 1719 – 1720 PARAGRAPHS G - D.** Counsel contended that it is settled law that the Court cannot wait for an unwilling litigant.

Counsel further referred to the case of **TOLOFARI & 7 ORS. V. SPDC (2009) 1 NMLR PAGE 99** where the court held thus:-

**“The law is settled that where a Plaintiff adduces oral evidence which establishes his claim against the Defendant in terms of the writ or statement of claim and that evidence is not rebutted either by challenging the same under cross examination or by controverting same in evidence. The plaintiff is entitled to judgment”**

Counsel urged court to grant the reliefs sought by Claimant.

I have carefully considered the evidence led by the Claimant and the 3 witnesses in respect of this suit. Before I proceed, it is important to state briefly the facts of this case. This suit relates to a land, the aggregate size of which measures 100 feet by 150 feet situate at Okaevbuogo Village Area. The case of the Claimant as can be gleaned

from her extant 2<sup>nd</sup> further amended statement of claim is that she purchased the land from two different persons namely Mr. Isaac Ikhinmwin 50 feet by 100 feet and Mr. J. E. Igbinedion 100 feet by 100 feet both of whom had earlier obtained a grant of same from His Royal Highness, Oba Akenzua II, The Oba of Benin in 1975.

In the process of constructing a structure on the land, the Defendant disrupted the work by policemen and caused her serious damages. The Claimant has now come to court claiming the following reliefs:-

- a). A declaration that the Claimant is deemed to have a statutory right of occupancy in respect of the parcel of land situate in ward 33E, Oka-Evbuogo, Benin City, measuring 150 feet by 100 feet.
- b). The sum of N200,000.000 as general damages for trespass.
- c). N3000,000.00 being special damages for the destruction of claimant's cement blocks, cement bags and destruction of sharp sand and gravels.
- d). Perpetual injunction restraining the Defendants, their servants, agents and privies from committing further acts of trespass or

doing anything whatsoever that is inconsistent with claimant's right of ownership of the said land.

It must be stated from the onset that several hearing notices were issued on the Defendant on 17/4/2014, 11/6/2014, 02/10/2014, 11/11/2014, 02/12/2014, 02/12/2014 and 08/03/2014 for him to defend the case, but he elected not to take advantage of the opportunity. The law is trite that a litigant who had been served hearing notice commanding him to proceed to court to defend the case instituted against him and who, the hearing notice apart, is otherwise aware of the proceedings taken against him by another cannot complain that his right to fair hearing has been breached if eventually a decision is given against him. Such a party is not covered by section 36 (1) of the 1999 constitution. We refer to **EZECHUKWU & ANOR V. ONWUKA (2016) VOL. 252 LRCN, PAGE 21 AT 45 PARAGRAPHS EE – JJ.**

The Defendant in this case did not enter appearance or file any process into Court in spite of all the hearing notices served on them. It simply means that the Defendant have no Defence to this action. See the case of **Asafa Food V. Alraine (Nig.), (2002), 99 LRCN. Pg. 1517 at pages 1536.**

The evidence of the Claimant is unchallenged and uncontradicted. It therefore follows that where evidence given by a party to proceedings

was not challenged by the other side who had the opportunity to do so, the Court seized of the matter will act on such unchallenged evidence before the Court.

Counsel stated that the Claimants have proved their case as required by law and therefore entitled to their reliefs as per their Amended Statement of Claim.

The Defendants in this case did not give evidence and was not cross-examined. From the Records, it is very clear and shows that the Defendant was not only served, but was fully aware of the Suit. In a matter where the Claimant gave evidence and there is no evidence to weigh against the evidence of the Claimant, the burden of proof is reduced to minimal proof and the Court can act on it. See **Abdul V. Benue State University (2003); 16 NWLR. (Pt. 845), Page 599 at 67; Ratio 11.**

On a meticulous scrutiny and appreciation of the facts adduced by the Claimants in their testimony and having considered the submission of Learned Counsel to the Claimants, I am of the firm view that the lone issue for determination in this case is whether from the totality of evidence adduced at trial, the Claimants have discharged the onus of proof necessary to enable them entitled to their reliefs claimed.

In an action for a declaration of title to land/house, the onus of proof lies on the Claimant and he must succeed on the strength of his

own case and not on the weakness of the Defence except where the Defendants' case support the Claimants' case. See **Adewuyi V. Odukwe (2005) 13 LRCN, 2510 at 2527.**

It has been laid down in **Idundun V. Okumagba (1976), 9 – 10, SC. 227** and more recently in **Iseogbekun V. Adelokun (2013), 2 NWLR. (pt. 1337) 140 at 164, para. F – H,** that there are five ways of proving ownership to any land in dispute, namely:-

1. Proof by traditional history or traditional evidence.
2. Proof by grant or the production of document of title.
3. Proof by acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference that the persons of such acts are true owners of the land.
4. Proof by acts of long possession.
5. Proof by possession of connected or adjacent land in circumstances rendering it probable that the owner of such land would in addition be the owner of the land in dispute.+

The 1<sup>st</sup> Claimant, 3<sup>rd</sup> Claimant, **C.W.1, C.W.2 & C.W.3** in this Suit pleaded and adduced evidence of ownership by producing document of title. See Exhibits **D, E, F & G**. There is no evidence from the

Defendant in rebuttal of these claims. It is now settled law that where there is no evidence to put on one side on the imaginary scale in a Court case, minimum evidence on the other side satisfies the requirement of proof. See **Asafa Food V. Alraine Nig.** (Supra).

What is required of a Claimant in an action for declaration of title to land/house is at least to establish his Claim by preponderance of evidence and to produce sufficient and satisfactory evidence in support of his Claim. This the Claimants have done in this present case.

The evidence led by the Claimants in this case is uncontradicted. The question now is have the Claimants proved their case based on evidence before the Court? The following questions must be asked:-

- (1) Is the evidence admissible?
- (2) Is it relevant?
- (3) Is it credible?
- (4) Is it conclusive?

The above questions are answered in the affirmative in favour of the Claimants in this case.

All the orders of the Court processes were duly served on the Defendant. Once a party is offered the opportunity to be heard and he or she choose not to utilize the opportunity, it does not lie on him to say that he has not been given fair hearing. **See Omorokeji V. Osun State Polytechnic (1998), 11 NWLR. (Pt. 140), 54, Ratio 5.**

It must be noted that the standard of proof for peculiar case like this is minimal.

The evidence of the Claimants is unchallenged. Where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always open to the Court seized of the matter to act on such unchallenged evidence before it. See **Provost, Lagos State College of Education & Ors. V. Edun (2004), 6 NWLR, (Pt. 870), Pg. 476 at 487, Ratio 18.**

In other words, where the Claimant adduces oral evidence which establishes his Claim against the Defendant in terms of Writ or Statement of Claim and that evidence is not rebutted by the defence either by challenging the same under cross-examination or by controverting the same in evidence, the Claimant is entitled to judgment. This is because the Defendant is deemed to have accepted the pleadings and evidence on the case of the Claimant totally. In such a

situation, the onus and standard of proof is minimal. See **New Breed Organisation Ltd. V. Erhomosele (2006), 5 NWLR. (Pt. 974), Page 507.**

This is all fours with the case presently before the Court.

In the circumstance, I am satisfied the claimant succeeds in this suit and therefore entitled to Judgment and Judgment is hereby entered in the following terms

- a). A declaration that the Claimant is deemed to have a statutory right of occupancy in respect of the parcel of land situate in ward 33E, Oka-Evbuogo, Benin City, measuring 150 feet by 100 feet.
- b). The sum of **N200, 000.000** as general damages for trespass.
- c). **N3000,000.00** being special damages for the destruction of claimant's cement blocks, cement bags and destruction of sharp sand and gravels.
- d). Perpetual injunction restraining the Defendants, their servants, agents and privies from committing further acts of trespass or doing anything whatsoever that is inconsistent with claimant's right of ownership of the said land.

This is the Judgment of the Court.

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HON. JUSTICE J.O. OKEAYA-INNEH  
JUDGE  
30<sup>TH</sup> JUNE, 2016

**COUNSELS:-**

- (1) M. I. SOLOMON ESQ. ... .. Counsel for the Claimant
- (2) No Appearance for the Defendant.