

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 WEDNESDAY, THE 22ND DAY OF JUNE, 2016.

SUIT NO: B/98/2014

BETWEEN:

MR. RICHARD OSAYI

í

CLAIMANT

AND

UNKNOWN TRESPASSER

í

DEFENDANT

JUDGMENT

The Claimant filed his Writ of Summons before this Court on the 27th day of February, 2014. In his Statement of Claim, he prayed this Court for the following reliefs as per paragraph 17 thereof as follows:-

õ17. WHEREOF the Claimant's claim against the Defendant are as follows:

- i. *A declaration that the Claimant is the owner of all that piece or parcel of land measuring 500ft by 700ft lying and situate at Aruogba Village, Ward 37B, Aruogba, along Aruogba/Egbirhe Road, Aruogba Village, Benin City, therefore entitled to the customary right of occupancy over the land.*
- ii. *A declaration that the Defendant entry into the Claimant's land measuring 500ft by 700ft is unlawfully(sic) and illegal.*

- iii. *An order of perpetual injunction restraining the Defendant, his/her agents, servants, privies and workmen from further entering, trespassing into the Claimant's land.*
- iv. *Damages of N5,000,000 (Five Million Naira) for the trespass to the Claimant's land."*

By a Motion Ex Parte filed by the Claimant for substituted service on the 7th day of March, 2014, this Court granted the order sought as prayed on the 2nd day of April, 2014. The Order sought on the Motion paper was as follows:

- õ1. An order of substituted service of Writ of Summons and all other processes in this case on the Defendant by pasting same on a conspicuous part of the wall of the uncompleted building at ward 37B, Aruogba Village Community, along Aruogba/Eghirhe Road, Aruogba, Benin City, being the Claimant's land which the Defendant/Respondent who is unknown trespasser unlawfully and illegally trespassed into by laying foundation and erecting a building without the consent and authority of the Claimant/Applicant.

AND for such further order(s) as this Honourable Court may deem fit to make in the circumstances.ö

The Enrolment of Order of the above order is at pages 40 and 41 of the case file. Based on this Order, the Bailiff of this Court served the Defendant (Unknown Trespasser) in tandem with the order of this Honourable Court on the 14th day of May, 2014 at 2:15 p.m. all the originating processes in this suit. (See page 43 of the case file for the Affidavit of Service). In spite of this Service, the Defendant did not appear in this Court nor file any process.

The Claimant opened his case by testifying for himself on Monday, the 17th day of November, 2014. He did not however complete his testimony as the case was further adjourned to the 21st day of January, 2015 for continuation of hearing. This Court subsequently ordered that a Hearing Notice be served on the Defendant which was duly served on the Defendant by the Bailiff of this Honourable Court on the 4th day of December, 2014. (See page 46 for the Affidavit of Service).

On Tuesday, the 8th day of March, 2016, the Claimant continued and concluded his evidence and closed his case.

Another Hearing Notice issued by this Court was also served on the Defendant on the 10th day of March, 2016. (See page 49 of the case file for the Affidavit of Service).

In spite of this, Service of Hearing Notice on the Defendant, he chose to ignore this Honourable Court.

The evidence of the Claimant is as follows:

õI, Mr. Richard Osayi, Male, Christian, Businessman and a Nigeria citizen residing at No. 134, Ekenwan Road, Benin City doth make this Statement/evidence on oath and states as follows:

1. That I am the Claimant in this case.
2. That am resident at No. 134, Ekenwan Road, Benin City, a place within the jurisdiction of this Honourable Court.
3. That the Defendant is an Unknown Trespasser, who illegally and unlawfully broke and entered into my land measuring 500ft by 700ft lying and situate at Ward 37B, Aruogba Village Community, Along Aruogba/Egbirhe Road, Aruogba Village, Benin City.
4. That sometime in 2012, the Defendant illegally and unlawfully uprooted some Palm trees from the land and started laying foundation on a portion of the land measuring 100ft by 500ft, without the consent and authority of the Claimant.
5. That by an agreement receipt in 1997, I acquired / purchase the aforementioned parcel of land measuring 500ft by 700ft from Aruogba Community through representatives of the community Namely: (1) Chief Daniel Erhunmwunse Omogie (the Ohen of Aruogba Community), (2) Odionwere Ogieriakhi Igbinosun, (3) Pa Ewaeseha Owieadolo, (4) Mr. Samson Osayandem (5) Mr. John

Ighilie, (6) Mr. Victor Idubor, (7) Mr. Goodluck Osayande, (8) Mr. Ogie, all are the elders of Aruogba Village Community and (9) Pastor Dickson Ogbahion, (the Secretary of Aruogba Village Community).

6. That I acquired the land vide an application in writing dated 10/09/1997 through the Plot Allotment Committee, Ward, 37B, Aruogba Village, Benin City, which was duly approved by the elders of the community under the Benin Customary Land Tenure System. I shall rely on the Application for allocation of building plot dated 10/9/1997 as well as the agreement receipt between me and the representatives of the community and certificate of purchase during the hearing of this case.
7. That I took physical possession of the said land, thereafter, without any hindrance or interference from any person.
8. That I cleared the land and started farming on it. I also planted palm trees on the land which I have been harvesting from time to time without any challenge from any person.
9. That recently the Defendant who is an unknown trespasser unlawfully and illegally trespassed into my land by cutting and uprooting some of palm trees from a portion of the land measuring 100ft by 500ft and

started laying foundation for building without the consent my and authority. (sic)

10. That immediately I noticed this act of trespass, I reported the matter to the Odionwere and the Youth Chairman of Aruogba Community.
11. That the Odionwere and the Youth Chairman of Aruogba Community told me that the unknown trespasser is not known to them.
12. That the Youth Chairman demanded to see my title document to be sure that I am the owner of the aforementioned land.
13. That I brought out my title document / purchase receipt and a measurement was carried out by the Youth Chairman who confirmed that the land belongs to me, but denied knowledge of the unknown trespasser who is illegally building on my land.
14. That after the meeting between me, the Odionwere and Youth Chairman, I consulted a lawyer to write to the community for them to stop forthwith act of trespass into my land. The Solicitors letter shall be relied upon at the trial.
15. That inspite of my compliant / report to the Odionwere, elders of the community and the youth chairman, the unknown trespasser is still carrying on the construction of a building in my land without my consent and authority.

16. That I had made several efforts to apprehend the unknown trespass but to no avail. I took photographs of the building structure on the land and shall rely on same at the hearing of this case.
17. That the action of the Defendant is wrongful and illegal in law.
18. WHEREOF my claims against the Defendant are as follows:
 - i. *A declaration that I am the owner of all that piece or parcel of land measuring 500ft by 700ft lying and situate at Aruogba Village, Ward 37B, Aruogba, along Aruogba/Egbirhe Road, Aruogba Village, Benin City, therefore entitled to the customary right of occupancy over the land.*
 - ii. *A declaration that the Defendant entry into my land measuring 500ft by 700ft is unlawfully (sic) and illegal.*
 - iii. *An order of perpetual injunction restraining the Defendant, his/her agents, servants, privies and workmen from further entering, trespassing into my land.*
 - iv. *Damages of N5,000,000 (Five Million Naira) for the trespass to my land.*
19. That I swear to this affidavit bonafide, believing its contents to be true, correct and in accordace with the Oaths Acts.ö

In the course of the hearing of the case of the Claimant, Eight Exhibits were admitted in evidence as follows:

1. Exhibit ðAö - Photocopy of an ðApplication for Allocation of Building Plotö by the Claimant Through Plot Allocation Committee, Ward 37B Aruogba Village, Benin City dated 10/9/97.
2. Exhibit ðBö - Original Copy of Exhibit ðAö.
3. Exhibit ðCö - Undated 1997 Deed of Assignment with enclosed Property Survey of the Claimant with Plan No. ISO/ED/181/97 and dated 25/9/97.
4. Exhibit ðDö - Claimant's Letter to Mr. Felix Ogbaretin through a Law Chamber, Kola S. Okeaya-Inneh, S.A.N. & Co. titled: ðTrespass to Land Belonging to Mr. Richard Osayiö dated 18th August, 2012.
5. Exhibit ðD1ö - Photograph.
6. Exhibit ðD2ö - Photograph.
7. Exhibit ðD3ö - Photograph.
8. Exhibit ðD4ö - Negative of Exhibit ðD1ö, ðD2ö & ðD3ö above.

On Friday, the 27th day of May, 2016, the Claimant adopted his Final Written Address dated and filed on the 17th day of May, 2016. In this Written

Address prepared by A.E. Akponana, Esq. of V.G. Eguamwense & Co.

a sole issue for determination was canvassed as follows:

öWhether the Claimant has adduced sufficient evidence

before the Court that he is the owner of the land in dispute.ö

Learned counsel argued this lone issue, cited authorities and finally concluded by urging this Honourable Court to hold that the Claimant has sufficiently proved his case to warrant the reliefs stated in the statement of claim.

COURT:

I have given careful consideration to the claim of the Claimant, his unchallenged evidence on Oath, the Exhibits admitted in evidence and the Final Written Address of the Claimant, including the authorities cited therein. I am convinced that the lone issue canvassed for determination by the Claimant is appropriate. I adopt same and I reproduce it for emphasis:

öWhether the Claimant has adduced sufficient evidence

before the Court that he is the owner of the land in dispute.ö

From the onset, let me say that the evidence of the Claimant who testified for himself only is unchallenged since the Defendant ignored this Court in spite of the services of the originating processes of the Claimant on him and the several Hearing Notices served on him by this Court. It is trite that credible unchallenged evidence should be accepted by the Court. See MARTCHEM INDUSTRIES NIG.

where G.A. Oguntade, JSC held at page 1049 thus:

“It is now trite law that when evidence is unchallenged and uncontroverted, the same may be accepted by the trial Court for the purpose the evidence is offered provided the evidence itself is in its nature credible.”

What is the case of the Claimant? He pleaded and gave evidence on same that the Defendant illegally and unlawfully broke and entered into his land measuring 500 feet by 700 feet at Ward 37B, Aruogba Village Community, Benin City; that he applied for the above land and was given; that there was an agreement in 1997 to that effect; that he took possession of the land and surveyed it; that he planted palm trees on same which he had begun to harvest from time to time before the Defendant trespassed on the land and uprooted some of the palm trees on the land on a portion measuring 100feet by 500 feet; that the Defendant laid foundation on same without his consent and authority; that he reported the incidence to the Odionwere and the Youth Chairman of Aruogba Community who told him they did not known the trespasser.

For the above, see paragraphs 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the Statement of Claim and paragraphs 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the Evidence on Oath of the Claimant.

It is the law that one of the five modes of proving title to land is acts of long possession and enjoyment of land. The Claimant pleaded and testified that he purchased the land in dispute and immediately took effective possession from 1997 till sometime in 2012 before the Defendant trespassed on it. (See paragraphs 2, 5, 6, 7 and 8 of the Statements of Claim and paragraphs 3, 6, 7, 8 and 9 of the evidence on Oath of the Claimant. It is the law that proof of one of the five modes is sufficient. See CLEMENT ODUNUKURE V. DENNIS OFOMATA & ANOR. (2010) NSCQR VOL. 44 PAGE 379 where B. Rhodes Vivour, JSC held at page 404 thus:

Ownership of land may be proved in any of the following five ways:

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, and
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.

In OKPALA EZEOKONKWO & 2 ORS V. NWAFOR OKEKE & 2 ORS.

(2002) NSCQR VOL. 10 PAGE 527 A.I. Iguh, JSC held at Page 543 that:

“It has long been settled that a party relying on acts of possession and ownership as evidence of title to land must show that such acts not only extend over a sufficient length of time but that they are numerous and positive to warrant the inference of exclusive ownership.”

From 1997 to 2012 is a period of fifteen (15) years. It is my view therefore that a period of possession lasting for fifteen years with positive acts of planting and harvesting palm fruits is a sufficient length of time to warrant inference of exclusive ownership. I therefore hold that the Claimant has proved by his pleadings and unchallenged evidence that he is the owner of the 500 feet by 700 feet of the land covered by the Survey Plan enclosed within Exhibit “C” herein.

The Claimant however pleaded at paragraphs 3 and 8 of this statement of claim that the Defendant unlawfully and illegally trespassed on a part of the land measuring 100 feet by 500 feet by cutting and uprooting some of the palm trees and started laying foundation for building without his consent and authority. He testified to these pleadings at paragraphs 4 and 9 of his evidence on Oath which are again reproduced for emphasis as follows:

“4. That sometime in 2012, the Defendant illegally and unlawfully uprooted some Palm trees from the land and started laying foundation

on a portion of the land measuring 100ft by 500ft, without the consent and authority of the Claimant.

9. That recently the Defendant who is an unknown trespasser unlawfully and illegally trespassed into my land by cutting and uprooting some of palm trees from a portion of the land measuring 100ft by 500ft and started laying foundation for building without the consent my and authority (sic).

Did the Claimant prove this 100 feet by 500 feet as the exact area trespassed upon by the Defendant? He did not. No evidence was led on this nor a Litigation Survey Plan tendered to indicate this area. This would not however adversely affect the case of the Claimant because the trite that an entry into a land in possession of another is a trespass upon which the party in possession is entitled to damages. See EMMANUEL ADERIBIGBE ADENIRAN V. EMMANUEL ALAO TOSIL HOLDING LTD. (2001) NSCQLR VOL. 8 page 484 where S.O. Uwaifo, JSC held at page 500 thus:

“An owner of land who has not alienated it by way of lease or tenancy is prima facie entitled to damages if a third party goes upon the land without his consent.

The slightest evidence of possession by him is enough.”

From my foregoing reasoning therefore, I hold that the Claimant has proved ownership of the land in dispute. I also hold that the entering of the Defendant into the land by uprooting the palm trees and laying foundation thereon is an act illegal, unlawful and trespassory of which the Claimant is entitled to damages.

In the final analysis, I answer the lone issue for determination in the affirmative in the following terms:

1. A declaration that the Claimant is the owner of all that piece or parcel of land measuring 500 feet by 700 feet lying and situate at Aruogba Village, Ward 37B, Aruogba, along Aruogba/Egbirhe Road, Aruogba Village, Benin City and therefore entitled to the customary right of occupancy over the land.
2. A declaration that the Defendant's entry into the Claimant's land measuring 500 feet by 700 feet is unlawful and illegal.
3. An Order of perpetual injunction restraining the Defendant, his/her agents, servants, privies and workmen from further entering, trespassing into the Claimant's land.
4. Damages of N1, 000, 000.00 (One Million Naira) for the trespass to the Claimant's land.

HON. JUSTICE V.O. EBOREIME
JUDGE
WEDNESDAY, 22ND JUNE, 2016

Counsel:

A. E. Akponana, Esq. and I. B. Omoiyekekenwen, Esq.
For the Claimants.