

IN THE HIGH COURT OF JUSTICE  
IN THE BENIN JUDICIAL DIVISION  
HOLDEN AT BENIN CITY  
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,  
JUDGE, ON MONDAY THE  
30<sup>TH</sup> DAY OF JANUARY, 2017.

BETWEEN:

SUIT NO: B/131M/16

DR. JOHNSON AGHARESE EGONMWAN

--- CLAIMANT

AND

PERSONS, NAMES UNKNOWN

--- DEFENDANTS

JUDGMENT

The Claimant instituted this suit by Originating Summons pursuant to Order 51, Rule 1 (2) of the Edo State High Court (Civil Procedure) Rules, 2012 against the Defendants (Persons, Names Unknown).

The Claimant's claims against the Defendants are as follows:

- (i) *A **DECLARATION** that the Claimant is entitled to the grant of Certificate of Occupancy No. EDSR12849 dated the 11<sup>th</sup> day of November, 1997, registered as No. 38 at page 38 in Volume B.184 at the Lands Registry, Benin City, Edo State in respect of the parcel of land measuring 100feet by 200feet (approximately 1772.884 square metres) situate, lying at Ward 'A' Ugbor, G.R.A., in Oredo Local Government Area, Benin City, Edo State more particularly delineated in Survey Plan No: ISO/ED/866/93.*

- (ii) *A **DECLARATION** that the Claimant is the bonafide owner of and entitled to peaceful possession and enjoyment of the parcel of land measuring 100feet by 200feet (approximately 1772.884 square metres) situate/lying at Ward 'A' Ugbor, G.R.A., in Oredo Local Government Area, Benin City, Edo State, more particularly marked and delineated in the Survey Plan No. ISO/ED/866/93 with Certificate of Occupancy No. EDSR12849 dated the 11<sup>th</sup> day of November, 1997, registered as No. 38 at page 38 in Volume B.184 at the Lands Registry, Benin City, Edo State.*
- (iii) ***AN ORDER** of this Honourable Court compelling the Defendants to deliver up forthwith, possession of the said parcel of land illegally occupied by the Defendants without the licence or consent of the Claimant.*
- (iv) ***AN ORDER** of perpetual injunction restraining the Defendants, their servants, privies, agents and/or employees from entering into or committing further acts of trespass upon the Claimant's land.*

The Originating Summons is supported by a 27 paragraphs affidavit, an 18 paragraphs Affidavit of Urgency, a Further and Better Affidavit of 14 paragraphs with a several annexures and a Written Address of Counsel.

At the hearing of the suit, the learned Counsel for the Claimants, Steve A.Onokpachere Esq., relied on all the supporting affidavits with their annexures and adopted his Written Address as his arguments.

In his Written Address, dated 15<sup>th</sup> November, 2016, the learned Counsel for the Claimant formulated two Issues for Determination as follows:

- A. Whether or not the claimant can validly recover possession of his parcel of land measuring 100feet by 200feet (approximately 1772.884 square*

*metres) the subject matter of this suit vide originating summons for possession under order 51, rule 1 (2) of the Edo State High Court (Civil Procedure) Rules, 2012; and*

*B. Whether or not the claimant has sufficiently established his case having regard to the totality of the evidence adduced by the claimant in this suit to entitle the claimant to the reliefs sought from this honourable court.*

### ISSUE ONE

Under this Issue, learned Counsel submitted that by virtue of the provisions of Order 51, Rule 1 (2) of the Edo State High Court (Civil Procedure) Rules 2012, a land owner whose land is in occupation of a squatter(s) or person(s) occupying the land without the consent or licence of the owner of the land, can commence summary proceedings against the squatter(s) for possession of his parcel of land.

He quoted the said Order 51, Rule 1 (2) of the Edo State High Court (Civil Procedure) Rules, 2012 as follows:

*“Where a person claims possession of land which he alleges is occupied solely by persons other than those listed in Sub-rule 1, proceedings may be brought by originating summons in accordance with the provisions of the order.”*

He submitted that by the above provision, a person whose land is trespassed upon by unknown person(s) can recover possession of the land. He explained that this is different from the normal procedure where the person or persons in illegal possession would be identified and named as a party to the suit for the purpose of being bound by the order of the Court in the suit. For this submission, he relied on the decision of the Court of Appeal (Lagos Division) in the case of: *Dr. Paul*

*Nnodi V. Thanks Investment Ltd. (2005) 11 NWLR (part 935), page 29 at page 50,* where Onnoghen J.C.A. (as he then was) stated thus:

*“It is trite law that the procedure under Order 59 offers an Applicant a summary procedure for recovery of possession of land wrongfully occupied by a trespasser or trespassers whose or some of whose names the Applicant or Plaintiff does not know. This is contrary to possession of land in which the person in possession should be made a Defendant so that he would be bound by the order for possession, when made by Court. In a case where the Landlord does not know the names of the illegal occupiers of his land or cannot even physically identify all of them, the requirement that the person be made Defendants to the action would result in great injustice and hardship to the Landlord or Landowner....”*

He also referred to the case of: *Country and City Bricks Development Company Ltd vs. UACN Property Development Company Ltd (2008) BLR (part 1) page 423;* and a paper titled: *The Jurisprudence of Instituting an action against an Unknown Person*, presented by: *Hon. Justice P. A. Akhiero on Monday 1<sup>st</sup> August, 2016.*

He further submitted that under this procedure, a Claimant can commence the action by originating summons without any requirement of acknowledgment of service of the summons by the person unlawfully occupying the land.

He stated that by virtue of Order 51, Rule 3, a Claimant who commences an action by Originating Summons for possession is required to file in support, an affidavit stating:

- a) His interest in the land;
- b) The circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and
- c) That he does not know the name of any person occupying the land who is not named in the summons.

For this view, he relied on the case of: *Persons, Names Unknown V. Sharis International Ltd (2006) 8 NWLR (pt. 982) Page 255 at Page 265.*

Counsel submitted that in the instant case, the Defendants whose names are unknown to the Claimant entered into the Claimant's parcel of land the subject matter of this suit without the consent and/or licence of the Claimant and have remained therein erecting illegal structures/buildings on Claimant's land without the Claimant's consent or licence.

He maintained that the Claimant accordingly filed an affidavit in support of his Originating Summons stating his interest in the land the subject matter of this suit, the circumstances in which the land has been occupied by the Defendants without his consent or any licence from him and that he does not know the names and identities of the Defendants who have trespassed into his land despite several frantic efforts to ascertain their names and identities. He referred the Court to paragraphs 3, 13, 17, 18, 19 and 20 of the supporting affidavit.

He submitted that from the foregoing, the Claimant can validly recover possession of his land the subject matter of this suit being illegally trespassed upon by the Defendants *vide* the Originating Summons for Possession (Form 36) pursuant to the provisions of Order 51, Rule 1 (2) of the Edo State High Court (Civil Procedure) Rules, 2012 and urged the Court to resolve Issue No. 1 in favour of the Claimant.

## ISSUE TWO:

Opening his arguments in respect of Issue 2, learned Counsel referred the Court to the case of: *Idundun and ORS vs. Okumagba and Others (1976) 1 NMLR, page 200*, where the Supreme Court of Nigeria identified the five ways of proving title to land to wit:

- (a) By traditional evidence;
- (b) By production of documents of title;
- (c) Acts extending over a sufficient length of time and are numerous and positive enough to warrant the inference that the person(s) is/are the true owner(s);
- (d) Acts of long possession and enjoyment of the land; and
- (e) 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.

He submitted that the Claimant need not adduce evidence to conjunctively prove the five ways of establishing title to land. He said that proof of any of the five ways is sufficient to entitle the Claimant to the declaration or reliefs sought.

He stated that in the instant case, the Claimant has adduced sufficient evidence to recover possession of his land on the balance of probabilities as required under Section 131 and 132 of the Evidence Act, 2011. He maintained that the Claimant relied on his documents of title to establish his ownership of the said land.

Counsel referred the Court to affidavit evidence of the Claimant to prove how he purchased the land in May, 1976 from one Chief Ekhaton Omoregie the original Allottee of the land. That after acquiring the land, he immediately took

possession of the land, without any scintilla of adverse claims or trespass on his land, until he travelled abroad for sabbaticals, molded blocks for development on the land, surveyed the land and obtained a Certificate of Occupancy No. EDSR12849 dated 11<sup>th</sup> day of November, 1997, registered as No. 38, at page 38 in Volume B.184 at the Lands Registry, Benin City, Edo State.

He referred the Court to the following documentary evidence: A Certified True Copy of the Certificate of Occupancy No. EDSR12849 dated 11<sup>th</sup> day of November, 1997; Survey Plan No. ISO/ED/866/93; Deed of Transfer dated 27<sup>th</sup> day of May, 1976 (tendered as a mere purchase receipt); Certificate of Transfer of Building Land dated 27<sup>th</sup> day of May, 1976; Oba's Approvals dated 5<sup>th</sup> of January, 1962 and 20<sup>th</sup> of April, 1974 respectively; and a Purchase Receipt for Rubber Trees, etc in respect of the land.

He also referred to the Supreme Court decision in the case of: *Romaine V. Romaine (1992) 4 NWLR (part 238) pages 650 at 66* and urged the Court to attach high probative value to the documents of title in determining the case.

Arguing further, learned Counsel stated that in proving the ownership of land, whether of statutory or customary right, a party need not plead and prove any more than one of the five methods stated above. However, he posited that if the Claimant relies on more than one method to prove his title, he merely does so *ex abundant cautela* as proof of a single root of title is sufficient to sustain Claimant's claim for recovery of possession of land. See: *Omosho V. Saka (2015) All FWLR (Pt. 782) 1686 at 1702*.

He maintained that the Claimant's reliance on purchase receipt also establishes his ownership of the land. He submitted that the Certificate of Occupancy, Deed of Transfer/Agreement (tendered as mere purchase receipt), are adequate documents of title in proof of Claimant's ownership of the said land the

subject matter of this case. See: *Sankey V. Onayiefeke (2014) All FWLR (Pt. 749) pg 1034 at 1065*

Counsel submitted that in summary proceedings commenced by way of originating summons to recover possession of land occupied or trespassed upon by squatters without the consent or licence of the owner of the land, the burden of proof required is minimum proof to entitle the land owner to judgment.

Based on the foregoing, Counsel submitted that the Claimant has adduced sufficient evidence to be entitled to the reliefs sought and he urged the Court to so hold and to resolve Issue No. 2 in favour of the Claimant.

I have carefully considered all the processes filed in this application, together with the arguments of the learned counsel for the Claimant.

In this suit, the Claimant has come under a unique procedure of instituting this action against unknown or unnamed Defendants. The procedure is *Sui generis* and is an exception to the rule against filing a suit against an unknown or unnamed defendant. It is enshrined in Order 51 of the Edo State High Courts Civil Procedure Rules, 2012.

For the avoidance of doubt, the said Order 51 provides as follows:

*“ORDER 51*

*1. Application of this Order*

*(1) This Order shall not apply where the person in occupation of land is:*

*(a) a tenant; or*

*(b) a tenant holding over after termination of his tenancy; or*

*(c) a licensee of the owner or person entitled to possession; or*

*(d) a person who had the consent of the predecessor-in-title of the person who is entitled to possession.*

*(2) Where a person claims possession of land which he alleges is occupied solely by persons other than those listed in sub-rule 1, proceedings may be brought by originating summons in accordance with the provisions of this Order.*

*2. Proceedings to be brought by originating summons: Form 36*

*The originating summons shall be in Form 36 and no acknowledgment of service shall be required.*



3. *Affidavit in support*

*The claimant shall file in support of the originating summons, an affidavit stating:*

*(a) his interest in the land;*

*(b) the circumstances in which the land has been occupied without license or consent and in which his claim to possession arises; and*

*(c) that he does not know the name of any person occupying the land who is not named in the summons.”*

In the case of: *Emeka Okoli & Ors. Vs. Alhaji Ibrahim Gadan* (2014) LPELR-23067 (CA). *per* Abiru, JCA at pages 28-30, Paras E-A the Court of Appeal explained the application of this special procedure thus:

*“The provisions of Order 50 [High Court of Kaduna Civil Procedure Rules, 2007] are similar to the provisions of Order 113 Rule 1 of the Supreme Court Practice of England and the provisions of Order 59 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules 1994 and Order 53 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules, 2014 [ which is impari materia with the provisions of Order 53 of the extant Lagos High Court (Civil Procedure) Rules, 2012]. In proceedings under this order, the only claim that can be made in the originating process is for recovery of possession of land; no other cause of action can be joined with such a claim in such proceedings, whether for payment of money, such as rent, mesne profits, damages for use and occupation or other claim for damages or for injunction or declaration or otherwise. The Order is narrowly confined to the particular remedy described in Rule 1. No order for costs can be made except there is a named defendant.....”*

Essentially, the rule enables a land owner whose land is in the occupation of a squatter(s) or a person (s) occupying the land without his consent, to commence summary proceedings against the squatter for possession of the land. The procedure offers a Claimant the opportunity to recover possession of land wrongfully occupied by unknown persons. This is contrary to the normal procedure where the person in illegal possession would be identified and named as a defendant so that he can be bound by the order of the court in the suit.

This special procedure was introduced to avoid the injustice and hardship on the part of claimants who are unable to proceed against unknown trespassers because of their inability to identify and serve them as defendants in the suit. See the case of: *Nnodi vs. Thanks Investment Ltd.* (2005) 11 NWLR (Pt.935) 29.

The Order applies where the occupier has entered into occupation without the license or consent of the person in possession or of any of his predecessor in title. See the case of: *County & City Bricks Development Company Ltd. vs. UACN Property Development Company Ltd.* 2008) BLR (Pt.1) p.423. In the case of: *Bristol Corporation vs. Persons Unknown* 1974) 1 WLR 365, the court held that the procedure also applies to a person who has entered possession of land with a license but has remained in occupation without a license.

Under this procedure, the Claimant commences the action by Originating Summons, without any requirement of acknowledgment of service of the summons by the person unlawfully occupying the land. See: *Order 51 Rule 2 of the Edo State High Courts Civil Procedure Rules, 2012.*

A salient point that must be noted at this stage is that the procedure under Order 51 is only restricted to the recovery of possession of landed property. It cannot apply where the Claimant is seeking declaration of title to the land. In the case of: *Emeka Okoli & Ors. Vs. Alhaji Ibrahim Gadan* (2014) LPELR-23067 (CA). *per* Abiru, JCA at pages 28-30, Paras E-A the Court of Appeal explained the application of this special procedure thus:

*“In proceedings under this order, the only claim that can be made in the originating process is for recovery of possession of land; no other cause of action can be joined with such a claim in such proceedings, whether for payment of money, such as rent, mesne profits, damages for use and occupation or other claim for damages or for injunction or declaration or otherwise. The Order is narrowly confined to the particular remedy described in Rule 1. No order for costs can be made except there is a named defendant.....”*

Thus in the instant case, the claims for Declaratory reliefs as contained in Reliefs 1 and 2 of the Originating Summons cannot be entertained under this procedure. Furthermore, the claim for perpetual injunction under Relief 4 cannot be entertained because the relief is predicated on the declaration of title. In the event, the only viable claim is Relief 3 which is for possession.

To succeed in a claim brought under Order 51, the Claimant's supporting affidavit must establish the following facts:

- (a) His interest in the land;
- (b) The circumstances in which the land has been occupied without license or consent and in which his claim to possession arises; and
- (c) That he does not know the name of any person occupying the land who is not named in the summons.

Going through the Claimant's supporting Affidavit; it is evident that the Claimant complied with the requirements of Order 51 of the Rules.

From paragraphs 12 to 22 the Claimant narrated how he acquired the land *vide* a Deed of Transfer and a Certificate of Transfer. He stated that some time ago, he travelled abroad for his sabbaticals and upon his return, he discovered that some unknown trespassers entered the land without his consent or license and started to erect some illegal structures on the land. He reported the matter to the Police, the Ministry of Lands and Surveys, and the Ministry of Housing and Urban Development. The Ministry officials accompanied him to the site and marked the buildings with the inscription: "*illegal Buildings/structures, STOP WORK*" but the unknown developers continued to build secretly.

In paragraph 14 of the Claimant's Affidavit of Urgency, the Claimant stated that he contacted a photographer who accompanied him to the site to take some pictures of the illegal structures which he annexed as Exhibits: E.E1, E2, E3, E4, E5, E6, E7 and E8 respectively.

In paragraphs 19 and 20 of the Affidavit in support, the Claimant stated that he does not know the names and identities of the Defendants who have trespassed into his land despite several frantic efforts to ascertain the names and identities of the unknown trespassers hence they are described as unknown trespassers/defendants in the Originating Summons.

It is to be noted that under the rules, "landed property" means land with or without building thereon. See: Ord.51 Rule 8(2) Edo State Civil Procedure Rules, 2012. So the property that can be subject to the procedure is not limited to an undeveloped land but also includes a developed property such as the one in dispute.

Notwithstanding the liberal provisions of Order 51, where the suit is uncontested, the Claimant still has the onus to prove the claim. However, in the unreported case of: *Olumuyiwa Odejayi & Anor. vs. Person Unknown* Suit No:

ID/97M/2005(unreported), the High Court of Lagos State held that the burden is of such minimum proof as is sufficient to establish their entitlement to judgment.

Going through the available affidavit evidence, I am of the view that the evidence is credible and substantial enough to sustain the claim for possession in favour of the Claimant.

Although the provision of Order 51 does not require personal service of the Originating Summons on the unnamed Defendants, in order to avoid any complaint of non-service by the Defendants, the Claimant obtained the leave of Court to effect service of the Court processes on the Defendant by substituted service by pasting same on the walls of the buildings on the land. This is in line with the provisions of *Order 51 Rule 4(2) (a) of the Edo State High Courts Civil Procedure Rules, 2012*.

On the whole, I am satisfied that the Claimant has discharged the onus of proof required of him under the provisions of *Order 51 of the Edo State High Courts Civil Procedure Rules, 2012* in respect of his interest in the land, by virtue of the affidavit evidence, by showing the circumstances under which his claim for possession has arisen in relation to the Defendant's occupation of the land without the Claimant's license or consent, and he has also shown that the Defendants or their names are not known to him.

As I earlier explained in this Judgment, the claims for Declaration and Perpetual Injunction cannot be granted.

Consequently, *upon hearing the learned Counsel for the Claimant, Steve A. Onokpachere Esq. and upon reading the Affidavits of the Claimant filed on the 22<sup>nd</sup> of August, 2016, 26<sup>th</sup> of August, 2016 and 10<sup>th</sup> of November, 2016 respectively, it is ordered that the Claimant do recover possession of the land described in the Originating Summons, measuring 100feet by 200feet (approximately 1772.884 square metres) situate/lying at Ward 'A' Ugbor, G.R.A., in Oredo Local Government Area, Benin City, Edo State, more particularly marked and delineated in the Survey Plan No. ISO/ED/866/93 with Certificate of Occupancy No. EDSR12849 dated the 11<sup>th</sup> day of November, 1997, registered as No. 38 at page 38 in Volume B.184 at the Lands Registry, Benin City, Edo State and the Defendants do deliver up forthwith, possession of the said parcel of land*

*illegally occupied by them without the licence or consent of the Claimant and give possession of the said land to the Claimant. Costs is assessed at N20, 000.00 (twenty thousand naira) in favour of the Claimant.*

P.A.AKHIHIERO  
JUDGE  
30/01/17

COUNSEL:

Steve A.Onokpachere Esq.í í í í í í í í í í í í í í ..CLAIMANT.

Unrepresented...í í í í í í í í í í í í í í í í í í .DEFENDANT.