

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIRO,
JUDGE, ON FRIDAY THE
7TH DAY OF APRIL, 2017.

BETWEEN

SUIT NO: B/360/16

MR. CHRISTOPHER IYIRHIARO í í í í í í í í í í CLAIMANT

AND

GLADYS OMORUYI í í í í í í í í í í í í í í .DEFENDANT

JUDGMENT

The Claimant instituted this suit *vide* a Writ of Summons dated 7th June, 2016 and Statement of Claim dated 1st June, 2016, all filed the 2nd of June, 2016.

Originally, there were two defendants in the suit. However, on the 4th of August, 2016, the learned counsel to the Claimant applied to withdraw against the 2nd defendant and the name of the 2nd defendant was accordingly struck out from the suit.

The Claimant's claims against the Defendant, as contained in the Statement of Claim are as follows:

1. A DECLARATION that the Claimant is the owner entitled to statutory right of occupancy of the house known as No. 40B, Isosimwioba Street, (Jesus Christ Road), off Upper Sakponba Road, Benin City;
2. AN ORDER of perpetual injunction restraining the Defendant, her servants, agents or privies, from trespassing or further trespassing on the said house or any part thereof without the consent of the claimant; and
3. The sum of N2, 000,000.00 (two million naira) only as damages for trespass.

The Defendant was duly served with all the Court processes but she did not appear in Court all through the trial.

Eventually, the Claimant's Counsel filed two Issues for Determination and the Court adopted the issues with some modifications as follows:

1. *Whether the claimant is entitled to the Statutory Right of occupancy in respect of the house at No. 40B, Isosimwonba Street, (Jesus Christ Road), off Upper Sakponba Road, Benin City;*
2. *Whether the claimant is entitled to an order of perpetual injunction restraining the Defendant, her servants, agents or privies from trespassing or further trespassing on the said house or any part thereof without the consent of the Claimant; and*
3. *Whether the claimant is entitled to the sum of ₦2, 000,000.00 (two million naira) as damages for trespass.*

Thereafter, the matter was set down for hearing.

On the 24th of November, 2016, the Claimant opened his case. The Claimant adopted his Written Statement on Oath as his testimony in this suit and testified orally.

In his oral testimony, he informed the Court that he knows the Defendant. He stated that in paragraph 3 of his deposition, he referred to the document with which he purchased the land in question. He identified the original copy of the Deed of Transfer dated 2nd of February, 1993 and the document was admitted in evidence as Exhibit A.

He also referred the Court to paragraph 4 of the deposition where he stated that certain documents were handed over to him by his predecessor in title. He identified the documents and they were admitted in evidence as follows:

1. Agreement dated August 20th 1974 admitted as Exhibit B;
2. Agreement dated 20th May, 1976 admitted as Exhibit C; and
3. Oba's Approval dated 4th December 1971, admitted as Exhibit D.

In his Written Statement on oath, the Claimant stated *inter alia* that he has a house at No. 40B, Isosimwioba Street, (Jesus Christ Road), Off Upper Sakponba Road, Benin City which is the subject matter of this action. That he bought the said land together with a house made up of three rooms and one store.

That copies of the various titles of his predecessors in title were handed over to him upon purchase of the said house. That after buying the house, he restructured the building and added one room and a store to it to make it more habitable.

That the defendant is the mother of his two children. That after renovating the house he allowed a relative of the defendant to live in the house free of charge. That at that time he was co-habiting with the defendant at Aisiokuoba Street, Off St. Road, Benin City.

That sometimes in the year 2010 the defendant migrated to Canada with her two children. That while in Canada she declared to the authorities that she is a single mother even though she lived with him and consequent upon which she and the two children were admitted and placed on the pay role of the government.

That she also made allegations of abandonment and threat to life against him while he was in Nigeria consequent upon which he was arrested and detained when he visited Canada. He was later released but ordered not to go near the location of the defendant and the children.

That the Defendant had previously frustrated four different attempts by him to marry her hence they never got married.

That in 2014 when the defendant's mother died, she instructed her family not to allow him partake in the burial rites since they are not married. That on the 14th day of March 2015, he finally got married to another woman who is his present wife.

That he had asked the occupants of his house at 40B, Isosimwioba Street, (Jesus Christ Road) to quit the house but they have refused to leave.

On the 7th day of May 2016, when he drove past the house, he saw that the side perimeter fence in the house was pushed down and he met four young men molding blocks inside the empty space behind the house preparing to build other structures therein.

That he was reliably informed that the defendant said that since she has two children for him, the house would be her children's share of his estate upon his demise. He denied writing any will neither did he alienate the house to anybody. That the defendant instructed them to build on the land.

He has suffered deprivation from the use of his property by the act of the Defendants.

He claims against the defendant as follows:

1. A DECLARATION that he is the owner entitled to statutory right of occupancy of the house known as No. 40B, Isosimwioba Street, (Jesus Christ Road), Off Upper Sakponba Road, Benin City;
2. AN ORDER of perpetual injunction restraining the Defendants, their servants, agents or privies, from trespassing or further trespassing the said house or any part thereof without the consent of the claimant; and
3. The sum of N2, 000,000.00 (two million naira) only as damages for trespass.

Upon the conclusion of the evidence in chief of the Claimant, the Court ordered fresh Hearing Notice to be issued and served on the Defendant to enable her cross examine the Claimant.

When the matter came up for cross examination and further hearing, the defendant again did not turn up. The Claimant then proceeded to call two witnesses.

The first witness to testify was David Ibizugbe. He adopted his witness deposition made on the 2nd of June, 2016 in respect of this suit. He referred to paragraph 21 thereof where he stated that he was a witness to a transfer Agreement. He identified his signature on Exhibit A.

In his deposition the witness stated that the Transfer Agreement which was between one Osaro Asiriwa and the Claimant, was for the sale of a property which is now known as No. 40B, Isosimwioba Street, Jesus Christ Road, off upper Sakponba Road, Benin City.

He stated that the Claimant renovated the house after purchase and added one room and a store to the house including the perimeter fence.

The second witness was Charles Iwanegbe. He adopted his written deposition made on the 2nd of June, 2016 in respect of this suit. He testified that on the 2nd of February 1993 he was a witness to a Transfer Agreement. His deposition is almost a verbatim repetition of that of the 1st Claimant witness.

After the evidence of the second witness, the Claimant closed his case and the matter was adjourned for address.

On the day of the address, the learned counsel for the Claimant adopted his Written Address dated 12th of January, 2017 filed on the 17th of January, 2017.

In his extremely brief Written Address of one and a half pages, the Counsel for the Claimant: R.O.Okpiavbe Esq. formulated a sole Issue for Determination to wit: *“Whether the Claimant is entitled to the reliefs sought before this Honourable Court.”*

Arguing the sole issue, Counsel submitted that the Claimant is entitled to the reliefs sought. He maintained that the Defendant was served with all the processes in this suit but she refused to appear to defend the suit.

He maintained that the Claimant's evidence was never controverted by the Defendant despite the opportunity given to her to do so. He submitted that that the Court is duty bound to act on the unchallenged evidence of the Claimant and grant the reliefs sought. He relied on the cases of:

Nanie Abah & Ors. vs. Dr. Daru Owei (2015) All FWLR (Pt.780) 1343 at 1351; and Military Gov. of Lagos State vs. Adeyinka (2012) LRCN 1 at 13.

He urged the Court to act on the unchallenged evidence of the Claimant and grant the reliefs as contained in the Writ of Summons and Statement of Claim.

I have carefully considered all the processes filed in this Suit, together with the evidence led, the exhibits admitted in the course of the hearing and the address of the learned Counsel for the Claimant.

As I have already observed, the Defendant did not put up any appearance to defend this suit. Thus, the evidence of the Claimant remains unchallenged. The position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by

the trial court, who has a duty to ascribe probative value to it. See: *Monkom vs. Odili* (2010) 2 NWLR (Pt.1179) 419 at 442; and *Kopek Construction Ltd. vs. Ekisola* (2010) 3 NWLR (Pt.1182) 618 at 663.

Furthermore, where the Claimant has adduced admissible evidence which is satisfactory in the context of the case, and none is available from the Defendants, the burden on the Claimant is lighter as the case will be decided upon a minimum of proof. See: *Adeleke vs. Iyanda* (2001) 13 NWLR (Pt.729) 1at 23-24.

However, notwithstanding the fact that the suit is undefended, the Court would only be bound by unchallenged and uncontroverted evidence of the Claimant if it is cogent and credible. See: *Arewa Textiles Plc. vs. Finetex Ltd.* (2003) 7 NWLR (Pt.819) 322 at 341. Even where the evidence is unchallenged, the trial court has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim. See: *Gonzee (Nig.) Ltd. vs. Nigerian Educational Research and Development Council* (2005) 13 NWLR (Pt.943) 634 at 650.

Applying the foregoing principles, I will evaluate the evidence adduced by the Claimant to ascertain whether they are credible and sufficient to sustain the Claim.

The three Issues for Determination were earlier identified in this judgment. I will now proceed to resolve the issues *seriatim*.

ISSUE 1:

WHETHER THE CLAIMANT IS ENTITLED TO THE STATUTORY RIGHT OF OCCUPANCY IN RESPECT OF THE HOUSE AT NO. 40B, ISOSIMWONBA STREET, (JESUS CHRIST ROAD), OFF UPPER SAKPONBA ROAD, BENIN CITY.

In a claim for a declaration of a statutory right of occupancy to land, the burden is on the Claimant to satisfy the Court that he is entitled, on the evidence adduced by him, to the declaration which he seeks.

The Claimant must rely on the strength of his own case and not on the weakness of the defendant's case. See: *Ojo vs. Azam* (2001) 4 NWLR (Pt.702) 57 at 71; and *Oyeneyin vs. Akinkugbe* (2010) 4 NWLR (Pt.1184) 265 at 295.

It is now settled law that there are five ways of proving ownership of land. These are as follows:

- I. By traditional evidence;
- II. By the production of documents of title;
- III. By proving acts of ownership;
- IV. 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; and
- V. By acts of long possession and enjoyment of the land.
See: *Idundun vs. Okumagba* (1976) 9-10 S.C. 227;

Any one of the five means will be sufficient to prove title to the land. Each is independent of the other. See: *Nwosu vs. Udeaja* (1990) 1 NWLR (Pt.125) 188; and *Anabaronye & Ors. Vs. Nwakaihe* (1997) 1 NWLR (Pt.482) 374 at 385.

In the instant suit, from the evidence led, the Claimant is relying on the second and the third means of proof. To wit: proof by the production of documents of title; and acts of ownership.

The Claimant led evidence to show how he purchased the land in question. He identified the original copy of the Deed of Transfer dated 2nd of February, 1993 and the document was admitted in evidence as Exhibit A.

He also tendered some title documents handed over to him by his predecessor in title. The documents were admitted in evidence as Exhibits B, C and D at the trial.

Where a Claimant proves a conveyance as his root of title, he need not go beyond to prove his vendor's title as well unless the title of his vendor has become an issue in the case. See: *Olatuni vs. Adisa* (1995) 2 NWLR (Pt.376) 167N at 183.

Incidentally, in the instant suit, although the vendor's title is not in issue, the Claimant went the extra mile to lead evidence to prove his vendor's title.

The Claimant also led evidence of some acts of ownership. After buying the house, he restructured the building and added one room and a store to it to make it more habitable. After renovating the house, he allowed a relative of the defendant to live in the house free of charge. All these facts were unchallenged at the trial.

I have carefully examined the Claimant's evidence on oath together with his title documents. I find his evidence credible enough to sustain the claim. I am satisfied that the Claimant has established his title to the land in dispute and is therefore entitled to the statutory right of occupancy in respect of the house at No. 40b, Isosimwonba street, (Jesus Christ road), off upper Sakponba road, Benin city.

I therefore resolve Issue 1 in favour of the Claimant.

ISSUE 2:

WHETHER THE CLAIMANT IS ENTITLED TO AN ORDER OF PERPETUAL INJUNCTION RESTRAINING THE DEFENDANT, HER SERVANTS, AGENTS OR PRIVIES FROM TRESPASSING OR FURTHER TRESPASSING ON THE SAID HOUSE OR ANY PART THEREOF WITHOUT THE CONSENT OF THE CLAIMANT.

It is settled law that a person in possession can maintain an action for trespass against anyone who cannot show a better title. See: *Barje vs. Gunduma (2001) FWLR (Pt.74) 314 at 326.* Moreover, the slightest evidence of possession by a land owner will be sufficient to maintain an action for trespass. See: *Ojo vs. Azama (2001) FWLR (Pt.38) 1329 at 1345-1346; and Adeniran vs. Alao (2002) FWLR (Pt.90) 1285 at 1304.*

In these proceedings, the Claimant led evidence of possession of the disputed property. According to him, after buying the house, he restructured the building and added one room and a store to it to make it more habitable. After renovating the house, he allowed a relative of the defendant to live in the house free of charge. All these facts were never controverted by the Defendant. I therefore hold that the Claimant is in possession of the property.

The Claimant also adduced unchallenged evidence to show how the Defendant hired some workmen to pull down the side perimeter fence of the house and started molding blocks inside the empty space, preparing to build other structures therein

Unlawful interference with possession of land by a person who has no title to the land amounts to trespass. See: *Chief Dokubo and Anor. vs. Chief J.Omoni & Ors.* I hold that the acts of the Defendant amounts to trespass.

Where the Court holds that there has been trespass, the Claimant is entitled to an injunction. See: *Ibafon Co. Ltd. vs. Nigerian Ports Plc. (2000) 8 NWLR (Pt.667) 86 at 102.*

In an action for trespass to land where the Court finds the Defendant liable for trespass, the Court cannot merely award damages against the Defendant without granting an injunction against him. This is because failure to grant a perpetual injunction to restrain the defendant may give him the opportunity to continue the acts of trespass which will necessitate the Claimant filing another action to restrain him. An order of perpetual injunction in the circumstances would give full effect to the judgment of the Court. See: *Balogun vs. Agbesanwa (2001) 2 NWLR (Pt.696) 184.*

In the event, I resolve Issue 2 in favour of the Claimant

ISSUE 3:

WHETHER THE CLAIMANT IS ENTITLED TO THE SUM OF ₦2, 000,000.00 (TWO MILLION NAIRA) AS DAMAGES FOR TRESPASS.

It is settled law that where the Court holds that there is trespass; the defendant is liable to pay damages. See: *A.G.Bendel State & Ors vs.Aideyan (2003) FWLR (Pt.187) 1736 at 1761.*

General Damages are presumed by law as the direct natural consequences of the acts complained of by the Claimant against the Defendant. The assessment of general damages is not predicated on any established legal principle. Thus, it usually depends on the peculiar circumstances of the case. See: *Ukachukwu vs. Uzodinma (2007) 9 NWLR (Pt.1038) 167; and Inland Bank (Nig.) Plc vs. F & S Co. Ltd. (2010) 15 NWLR (Pt.1216) 395.*

The fundamental objective for the award of general damages is to compensate the Claimant for the harm and injury caused by the Defendant. See: *Chevron (Nig.) Ltd. vs. Omoregha (2015) 16 NWLR (Pt.1485) 336 at 340.*

Thus, it is the duty of the Court to assess General Damages; taking into consideration the surrounding circumstances and the conduct of the parties. See: *Olatunde Laja vs. Alhaji Isiba & Anor. (1979) 7 CA.*

Flowing from the fore going, it is evident that the Claimant is entitled to general damages. However, the quantum of damages will depend on the evidence of what the Claimant has suffered from the acts of the Defendant. According to him, he has suffered the deprivation of the use of his property by the act of the Defendant. He however did not give details of the nature of deprivation to justify his claim for the whooping sum of two million naira. His evidence in this regard is rather vague.

The true position of the law is that General Damages demands the same standard of proof as Special Damages and must not be arbitrary; the only distinction is that there is no specific value on particular losses; areas of losses must be identified; motive and conduct of the Defendant would be taken into consideration where they aggravate the Claimant's injury. See: *UBA Plc. vs. Samba Petroleum Co. Ltd. (2003) FWLR (Pt.137)1199 at 1225, 1229.*

It is usual in cases such as this, where the Claimant has not shown that any particular loss was suffered for the Court to award nominal damages. See: *Artra Industries (Nig.) Ltd. vs. N.B.C.I (1998) 4 NWLR (Pt.546) 357; Ogbechie vs. Onochie (1988) 4 NWLR (Pt.70) 370.* In the event, I think the Claimant is not entitled to the sum of two million. He is only entitled to nominal damages.

Issue 3 is therefore partly resolved in favour of the Claimant.

On the whole, the claim succeeds and judgment is entered in favour of the Claimant as follows:

- 1. A DECLARATION that the Claimant is the owner entitled to statutory right of occupancy of the house known as No. 40B, Isosimwioba Street, (Jesus Christ Road), off Upper Sakponba Road, Benin City;**
- 2. AN ORDER of perpetual injunction restraining the Defendant, her servants, agents or privies, from trespassing or further trespassing on the said house or any part thereof without the consent of the claimant; and**
- 3. The sum of N200, 000.00 (two hundred naira) only as damages for trespass.**

Costs is assessed at N20, 000.00 (twenty thousand naira) in favour of the Claimant.

P.A.AKHIHIERO
JUDGE
07/04/17

COUNSEL:

R.O.Okpiavbe Esq.í í í í í í í í í í í í í í í í í í í ..CLAIMANT.

Unrepresented...í .DEFENDANT.