

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON THURSDAY THE
26TH DAY OF JULY, 2018.

BETWEEN:

SUIT NO: HCU/17/2014:

PA. JOSEPH E. OMONUA-----CLAIMANT

AND

MR. HENRY OKOH-----DEFENDANT

JUDGMENT

Originally, the Claimants instituted this suit *vide* a Writ of Summons and Statement of Claim dated and filed on the 2nd of May, 2014, against one unknown Unogbo man and the Defendant who was named the 2nd Defendant, seeking the following reliefs:

- (i) A DECLARATION that the Claimant is the person entitled to apply for and obtain the Right of Occupancy over a piece/parcel of land lying, being, or situate on the left hand side of Lugard Road when moving from Mission Road to Oyomon Road, Uromi. In Esan North East Local Government Area, Edo State, Nigeria, within jurisdiction;
- (ii) A perpetual injunction restraining the Defendants, their Agents, Privies from further entering into the land or doing anything on the land including excavating sand from the land, digging foundation on the land, or doing anything on the land in a manner inconsistent with the right of the Claimant;

(iii) ₦400, 000.00 (four hundred thousand naira) as general damages for trespass;
and

(iv) ₦300, 000.00 (three hundred thousand naira) being cost of this action.

The Writ of Summons was accompanied with the Claimant's statement of claim, list of witnesses to be called, Claimant's statement on oath, list of documents to be relied upon at trial and the Claimant's solicitor's pre-action letter dated April 23, 2014 and addressed to the Police and the Defendant.

Also filed along with the writ of summons was a motion on notice dated May 2, 2014 for interlocutory injunction on the grounds that the Defendants were hurriedly developing the piece of land in dispute, day and night by excavating soil from the land and thereby changing the character of the land.

After several attempts by the Bailiff of this Court to serve the court processes and pursuant to a motion *ex parte* by the Claimant's counsel, the court ordered that the processes be served by substituted service by pasting them on the wall at the building site.

On February 10, 2015 this Honourable court granted the Claimant's application for interlocutory injunction and the enrolled order was also served on the Defendants by pasting same on the wall of the building site and the matter was set down for hearing.

By way of motions filed in court on 23rd May, 2014 and 10th January, 2017 respectively, leave was granted to the Claimant to call more witnesses and file their depositions on oath.

On May 18, 2016, the 2nd Defendant and the Claimant were in Court; but the 2nd Defendant was unrepresented by a counsel. The Claimant at the request of the 2nd Defendant asked the Court for an adjournment to enable them settle the matter out of court and the case was adjourned to September 20, 2016 for report of settlement or for definite hearing. But the Defendants never turned up for the settlement which broke down. The situation was reported to court.

When the matter came up for hearing on November 22, 2016, the 2nd Defendant was absent and unrepresented by a counsel and the Court ordered that a

hearing notice be served on the Defendants and the hearing notice was served by the Bailiff of this Court.

On 15th of November, 2017 the Claimant withdrew against the 1st Defendant i.e. THE UNKNOWN UNOGBO MAN but continued with the remaining Defendant and the matter was adjourned to December 5, 2017 for hearing.

On 9th of January, 2018 the Claimant testified in Chief, adopted his deposition on Oath. His Solicitor's letter to the unknown Unogbo man and the Police was tendered and admitted in evidence as Exhibit 3A. The Court ordered that hearing notice be issued and served on the Defendant to enable him appear in Court to cross-examine the Claimant. The case was adjourned to January 17, 2018 for cross examination of the Claimant and further hearing.

On the next date, the Defendant did not appear in Court and one Thomas Izokun and Jacob Ihola testified as C.W.1 and C.W.2 respectively. The case was adjourned to 5th of February, 2018 for adoption of Final Addresses and the Court ordered that fresh hearing notice should be served on the Defendant.

On the 5th of July, 2018, the Defendant was again absent and the Claimant's counsel adopted his Written Address and the matter was adjourned for judgment.

From the evidence adduced at the trial, the Claimant's case is that his father, Pa. Omonua Ebhomielen deforested a large parcel of land of which the land in dispute forms a small part, built and farmed on the land and remained in possession till he died in 1982.

. The Claimant's father also showed further acts of procession when he granted to Madam Ikhueko Customary tenancy on the land in dispute. Besides, the Claimant consented that the corpse of the deceased Madam Ikhueko be buried on the land she occupied as a customary tenant to the Claimant's father, Pa. Omonua Ebhomielen. While in customary tenancy, Madam Ikhueko built a house on the land and when she died, her daughter, Madam Alice buried her mother, inherited the customary tenancy and continued to live on the land in place of her mother

Madam Alice was however childless and had no successor so the land became vacant for many years and remained unutilized. Meanwhile, market traders were dumping refuse on the land and the house collapsed and went into ruins.

Upon the demise of the Claimant's father in 1982, the Claimant as the eldest surviving son of his father, performed the burial rites and inherited his father's properties including the land in dispute in accordance with Esan native law and custom. He has been in possession of the land ever since.

In his Written Address, the learned counsel for the Claimant, J.I.Erewele Esq. formulated two Issues for Determination as follows:

- 1. *Whether the Claimant has proved his case on the preponderance of Evidence or balance of probability; and***
- 2. *Whether the Claimant is entitled to the reliefs sought.***

Thereafter he argued the two Issues *seriatim*.

ISSUE 1:

Whether the Claimant has proved his case on the preponderance of Evidence or balance of probability.

Arguing this Issue, learned counsel submitted that that the Claimant has proved his case on the preponderance of Evidence or balance of probability. He maintained that in attempt to prove his title to the land in dispute, the Claimant in paragraphs 3 to 6 of the Statement of Claim showed how his father, Pa. Omonua Ebhomielen deforested a large parcel of land on which the land in dispute forms a small part, built and farmed on the land and remained in possession till he died in 1982.

He contended that the Claimant's father also exhibited further acts of procession when he granted to one Madam Ikhueko, a customary tenancy on the land in dispute at the request of the late Madam Ikhueko's relation, Chief Ugboke Azeke. He said that the Claimant consented that the corpse of the deceased Madam Ikhueko be buried on the land she occupied as a customary tenant to the Claimant's father, Pa. Omonua Ebhomielen. He referred to paragraphs 7, 8, 9 and 10 of the Statement of Claim.

Counsel submitted that as a customary tenant, Madam Ikhueko built a house on the land and when she died, her daughter, Madam Alice buried her mother,

inherited the customary tenancy and continued to live on the land in place of her mother.

He posited that since Madam Alice was childless, she had no successor and the land became vacant for many years and remained unutilized. Thereafter, market traders started dumping refuse on the land and the house collapsed and went into ruins.

Counsel submitted that on the 22nd of April, 2014, The Claimant met the Defendant and a group of people working on the land in dispute day and night and when questioned the Defendant told the Claimant that he was an Agent of an Unknown Unogbo man living in Lagos (the initial 1st Defendant in this suit).

The Claimant retained a lawyer to write a Solicitor's letter to the Unknown Unogbo man, the Defendant and the Police.

Learned counsel submitted that under Esan native law and custom when a customary tenant vacates the land allocated to him by his landlord, the land reverts back to the landlord and referred to some previous occasions when this customary law was applied as follows: -

- a) When the Claimant's father left Mr. Obeto's land, he had occupied as a customary tenant, the land reverted back to Mr. Obeto of Oyomon Quarters, Uromi;
- b) Okhelen Community land occupied by one Aigboruan of Oyomo went back to Okhelen Community when Aigboruan relocated;
- c) Idigie Community land occupied by one Izokun went back to Idigie community when Izokun left the place;
- d) The Claimant's father's land he gave to Emola Ojeme reverted back to the Claimant's father when Emola Ojeme left the place;
- e) When Omodiale Okeakhe left the land the Claimant's father gave him as a customary tenant, the land reverted back to the Claimant's father; and
- f) When Barr. Odafen of Obeidu-Uromi vacated Ubierumu Community land which he occupied as a customary tenant, the land including the building thereon, reverted back to the Ubierumu Community.

He submitted that where the evidence of a witness is unchallenged in cross-examination by the adverse party, the latter is deemed to have accepted the evidence and in this case; the Claimant's evidence as correct. See the case of *ALIYU VS THE STATE (2013) vol. 226 LRCN (pt. 1), pg. 123. R12*. He also submitted that where no statement of defence is filed in answer or reply to a Statement of Claim, it means the Defendant has not joined issues with the Claimant. For this view, he relied on the decision of the Supreme Court in the case of: *EGESIMBA VS ONUZURUIKE (2002) 103 LRCN pg. 2485. R5*.

He therefore urged the Court to grant the Claimant's reliefs. He submitted that the Claimant being the landlord to Madam Ikhueko, allowed the corpse of his tenant, Madam Ikhueko to be buried on his land. He contended that the burial of the customary tenant of the Claimant on the land, with the Claimant's consent and authorization does not adversely affect the Claimant's title to the land in dispute. See the Supreme Court's decision in the case of: *OBUSEZ VS OBUSEZ (2007) Vol. 150 LRCN pg. 1840 – R.4*.

He referred to the case of: *FATOYINBO VS OSADEYI (2009) 47 WRN 153. R.6* and urged the Court to hold that the Claimant has proved his case on the preponderance of evidence or balance of probability and grant all the reliefs.

ISSUE II:

Whether the Claimant is entitled to the Reliefs sought.

On this Issue, learned counsel simply adopted his arguments on Issue 1 and submitted that the Claimant is entitled to all the reliefs he is seeking from this Court and urged the Court to grant the reliefs.

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

From the records contained in the court's file in this suit, all through the case, the Defendant entered a conditional appearance in this suit but never filed a Statement of Defence. He virtually abandoned the trial and never responded to all the Hearing Notices served on him.

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, which 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 Defendant, 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 Claimants to ascertain whether they are credible and sufficient to sustain the Claim.

I am of the view that the sole Issue for Determination in this suit is: ***whether the Claimant is entitled to the reliefs claimed in his Statement of Claim in this action.***

For the avoidance of doubt the Claimant's claims are as follows:

- i. A DECLARATION that the Claimant is the person entitled to apply for and obtain the Right of Occupancy over a piece/parcel of land lying, being, or situate on the left hand side of Lugard Road when moving from Mission Road to Oyomon Road, Uromi in Esan North East Local Government Area, Edo State, Nigeria, within jurisdiction;***
- (ii) A perpetual injunction restraining the Defendant, his Agents, Privies from further entering into the land or doing anything on the land including excavating sand from the land, digging foundation on the land, or doing anything on the land in a manner inconsistent with the right of the Claimant;***

(iii) ₦400, 000.00 (four hundred thousand naira) as general damages for trespass; and

(iv) ₦300, 000.00 (three hundred thousand naira) being cost of this action.

In a claim for a declaration of a 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;*

The point must be made that any one of the five means will be sufficient to prove title to the land as each is independent of the other. See: *Nwosu vs. Udejaja (1990) 1 NWLR (Pt.125) 188; and Anabaronye & Ors. vs. Nwakaihe (1997) 1 NWLR (Pt.482) 374 at 385.*

In the instant suit, the learned counsel for the Claimant did not categorically state the means of proof they relied on. However from the evidence led, they appear to be relying on the first, third and fifth means of proof. To wit: ***proof by traditional evidence; by acts of ownership; and acts of long possession and enjoyment of the land***

The Claimant's traditional evidence of title was traced from the period when the Claimant's father, Pa. Omonua Ebhomielen deforested a large parcel of land of which the land in dispute forms a small part, built and farmed on the land and remained in possession till he died in 1982.

Upon the demise of the Claimant's father, the Claimant as the eldest surviving son of his father, performed the burial rites and inherited his father's properties including the land in dispute in accordance with Esan native law and custom. He has been in possession of the land ever since.

This evidence of traditional history of the land which was neither challenged nor debunked remains good and credible evidence which can be relied upon in this trial. I have no reason to disbelieve 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.*

On acts of ownership and possession, Claimants led unchallenged evidence of how his late father granted to one Madam Ikhueko, a customary tenancy on the land in dispute at the request of the late Madam Ikhueko's relation, Chief Ugboke Azeke and how the Claimant consented that the corpse of the deceased Madam Ikhueko be buried on the said land.

Evidence was adduced to establish that Madam Ikhueko built a house on the land and when she died, her daughter, Madam Alice buried her mother there, inherited the customary tenancy and continued to live on the land thereafter.

That when Madam Alice died childless, the land became a refuse dump and the house built by Madam Ikhueko collapsed and went into ruins.

The Claimant led evidence on Esan native law and custom that when a customary tenant vacates the land allocated to him by his landlord, the land reverts back to the landlord and referred to previous occasions when this customary law was practiced in Uromi. These are also evidences of *acts of long possession and enjoyment of the land.*

All these acts of possession were uncontroverted. Such acts of possession raise a presumption of ownership. See: *Section 35 of the Evidence Act, 2011* and the case of: *Alikor vs. Ogwo (2010) 5 NWLR (Pt.1187) 281 at 312.*

On the claim for the sum of **₦400, 000.00 (four hundred thousand naira) as general damages for trespass**, it is settled law that 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*.

The quantum of damages will however depend on the evidence of what the Claimant has suffered from the acts of the Defendant.

In the instant case, Claimant adduced unchallenged evidence to prove that the Defendant led a group of people to the land and started digging foundation for a building. However, he did not tell the Court the stage of the building project embarked upon by the Defendant on the land. Moreover, the Claimant did not lead any evidence of what he has suffered from the acts of the Defendant.

Going through the entire gamut of the Claimant's evidence, there is no evidence of anything he suffered from the action of the Defendant. 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 only entitled to nominal damages.

On the claim for injunction, in the case of *Obanor vs. Obanor (1976) 2 S.C.1*, the Supreme Court held that where damages is awarded for trespass to land and there is an ancillary claim for injunction, the Court will grant perpetual injunction. This is the situation in the instant suit.

On the whole, the sole issue for determination is resolved in favour of the Claimant. The claims succeed and judgment is entered for the Claimant as follows:

- I. A DECLARATION that the Claimant is the person entitled to apply for and obtain the Right of Occupancy over a piece/parcel of land lying,***

being, or situate on the left hand side of Lugard Road when moving from Mission Road to Oyomon Road, Uromi in Esan North East Local Government Area, Edo State, Nigeria, within jurisdiction;

II. A perpetual injunction restraining the Defendant, his Agents, Privies from further entering into the land or doing anything on the land including excavating sand from the land, digging foundation on the land, or doing anything on the land in a manner inconsistent with the right of the Claimant; and

III. ₦100, 000.00 (one hundred thousand naira) as general damages for trespass;

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

P.A.AKHIHIERO
JUDGE
26/07/18

COUNSEL:

J.I.Erewele Esq. í í í í í 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 í Defendant.

