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 TUESDAY THE
30TH DAY OF OCTOBER, 2018.

BETWEEN: SUIT NO: HCU/15/2016

MR. CHRISTOPHER E. OLUMESE----------CLAIMANT

A N D

1. CHIEF INNOCENT ESELE
2. EJELE ESELE
3. UNKNOWN TRESPASSER

----------DEFENDANTS

JUDGMENT

The Claimant instituted this suit *vide* a Writ of Summons and Statement of Claim dated and filed on the 10th of March 2016, against the Defendants, seeking the following reliefs:

a) The sum of N500,000,000.00 (five hundred million naira) being special and general damages in that on or about the 3rd day of January, 2016, the Claimant discovered that the Defendants without the consent and/or authority of the Claimant broke onto the Claimantôs parcel of land measuring approximately 3.134 acres situate at Idumu ï Esele ï Quarters, along Idumu ï Ekhuere ï Utako Road, Off Taxona ï Egbele Road in Uromi, Esan North East Local Government Area, Edo State within the Judicial Division of this Honourable Court, and the said land is covered by Certificate of Occupancy No. BDSR 5662 registered as No. 42 at page 42 in Volume B74 at the Lands Registry Office at Benin City and more particularly delineated in survey plan No. MWC/1043/77 dated 26th July 1977, and wantonly destroyed the Claimantôs rubber trees thereon, and the Defendants had commenced erection of various illegal structures on the Claimant said land; and

b) Perpetual injunction restraining the Defendants by themselves, their agents, assigns, and privies from entering into the Claimantôs parcel of land measuring approximately 3.134 acres situate at Idumu-Esele Quarters, Along Idumu ï Ekhuere ï Utako Road, Off Taxona ï Egbele Road in Uromi, Esan North East Local Government Area, Edo State within the Judicial Division of this Honourable Court, and the said land is covered by Certificate of Occupancy No. BDSR 5662 registered as No. 42 at page 42 in Volume B74 at the Lands Registry Office at Benin City and more particularly delineated in survey plan No. MWC/1043/77 dated 26th July 1977 for any purpose whatsoever or doing anything at all thereat inconsistent or competing with the Claimantôs rights and interest thereto.

The Writ of Summons was accompanied with the Claimantôs Statement of Claim, List of witnesses to be called at the trial, Claimantôs statement on oath, list of documents to be relied upon at trial and several frontloaded documents.

The court processes were served on the 1st and 2nd Defendants by personal service and with the leave of Court the 3rd Defendant was served by substituted service.

In the course of the proceedings, the suit was struck out for want of diligent prosecution and with the leave of the Court it was re-listed. All through the proceedings, the Defendants never showed up in Court, neither were they represented by any counsel.

On the 10th of February 2015, this Honourable court granted the Claimantôs 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 the 20th of February, 2018, the Claimant opened his case testified in-chief, tendered a certified true copy of a Deed of Assignment, a Survey Plan and a Certificate of Occupancy collectively as Exhibit A. At the conclusion of the Claimantôs evidence in chief, the Court ordered that fresh Hearing Notices should be served on the Defendants and the suit was thereafter adjourned for cross-examination. However, on the adjourned date, the Defendants failed to appear in Court to cross-examine the Claimant. The Claimant closed his case and the matter was adjourned for final address of counsel.

The learned counsel for the Claimant filed his written address which was duly served on the Defendants without any response from them. On the day of the address, the learned counsel for the Claimant adopted his written address and the matter was adjourned for judgment.

In his Written Address, the learned Senior Advocate who represented the Claimant, Chief D.O.Okoh SAN, formulated a sole issue for determination as follows:

"Whether the Claimant has proved his cause on the preponderance of evidence to entitle him to the reliefs sought".

Arguing the issue, learned counsel submitted that under Esan Customary Law, the modes of land acquisition are as follows:

a) By deforestation;
b) By inheritance;
c) By outright purchase; and
d) By gift.

Again, he submitted that it is settled law that there are five ways of proving ownership of land to wit:

1) Proof by traditional evidence;
2) Proof by production of documents of title duly authenticated, unless they are documents of 20 or more years old;
3) Proof of acts of ownership in and over the land in dispute, such as selling, leasing, making grant, renting out all or any part of the land or farming on it, or portion thereof extending over a sufficient length of time, memories and positive enough as to warrant the inference that the persons exercising such proprietary acts are the true owners of the land;
4) Proof by acts of long possession and enjoyment of the land which *prima facie* may be evidence of ownership and proof by possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected land would in addition be the owner of the land in dispute.

For this view, he relied on the following decisions: ***Pada v. Galadima (2018) 3 NWLR (Pt. 1607) 436 at 455, Idundun v. Okumagba (1976) 9 – 10 SC 227, ,Atande v. Ajani (1989) 3 NWLR (Pt. 111), Anyanwu v. Mbara (1992) 2 NWLR (Pt. 242) 386; and Balogun v. Akeen J. (2005) 10 NWLR (Pt. 933) 394.***

Counsel submitted that from the unchallenged evidence of the Claimant, he has established that he acquired the land part of which is now in dispute by purchase and tendered title documents evidencing the sale and perfection of his title by a grant of a Certificate of Occupancy as far back as 27th January, 1987. He informed the Court that this dispute arose in 2016.That from 1987 to 2016 is more than 20 years. He therefore relied on ***Section 162 of the Evidence Act, 2011.***

He further submitted that the Claimant has proved his title by grant resulting in the production and tendering of registered title documents. For this, he relied on the case of: ***Orlu v. Onyeka (2018) NWLR (Pt. 1607) 467.***

He said that the Claimant has also proved his title by acts of possession as demonstrated in Survey Plan No. MWC/1043/77 dated 27th July, 1977.

He maintained that it is settled law that proof of title to land can be established by proving any of the five celebrated methods**.** He referred the Court to the case of:***Onovo v. Mba (2014) 14 NWLR (Pt. 1427) 391,*** where ***Ariwoola JSC*** stated thus:

> ***``As earlier stated, a Plaintiff claiming title to a particular parcel of land does not need to prove all the above methods or ways to establish his claim. They are non-conjunctive, it is sufficient if only one of the way(s) is proved. See: Ojoh v. Kamalu (2005) 12 SCM 332 (2005) 18 NWLR (Pt. 958) 523 at 574 – 575''.***

He submitted that in this case, the Claimant has established with certainty the extent of his land and tendered a Survey Plan to support this and has crossed the hurdle of proving the identity of the land with certainty to enable an injunctive relief to be granted, the same having been rendered ascertainable. See the case of: ***Orlu v. Onyeka (2018) 3 NWLR (Pt. 1607) 467.***

He maintained that although the identity of the land is not in issue, the Claimant has discharged the burden of establishing the identity of the land by cogent, credible and convincing evidence. He referred the Court to the cases of: ***Ogedengbe v. Balogun (2007) 9 NWLR (Pt. 1039) 380;*** and ***Okochi v. Animkwo (2003) 18 NWLR (Pt. 851) 1.***

He submitted that in a claim for declaration of title to land, a Claimant has the onus to prove his claim, based on the evidence he has adduced at the trial and not to rely on or capitalize on the weakness of the Defendantôs case. He said that the Claimant can however take advantage of the evidence of the Defendant that supports his case.

He submitted that the Claimantôs evidence stands uncontroverted and urged the Court to apply the case of: ***Iriri v. Erhuhwobara (1991) 2 NWLR (Pt. 173) 252 or (1991) 3 SC 1,***where the court held that:

> ***"Where the evidence of a witness is not inadmissible in law, uncontroverted and unchallenged, a court of law can act on it and accept it as a true version of the case it seeks to support."***

In conclusion learned counsel submitted that the Claimant has discharged the onus placed on him by law by proving his title to the land in dispute by cogent, credible and documentary evidence. He therefore urged the Court to grant all the reliefs sought by the Claimant.

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.

From the records contained in the courtôs file in this suit, the Defendants were duly served with all the relevant Court processes but they never entered any appearance; neither did they file any Statement of Defence. They virtually ignored the proceedings and never responded to any of the Hearing Notices served on them.

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 Claimant 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 Claimantôs claims are as follows:

(a) The sum of N500,000,000.00 (five hundred million naira) being special and general damages in that on or about the 3rd day of January, 2016, the Claimant discovered that the Defendants without the consent and/or authority of the Claimant broke onto the Claimant's parcel of land measuring approximately 3.134 acres situate at Idumu – Esele – Quarters, Along Idumu – Ekhuere – Utako Road, Off Taxona – Egbele Road in Uromi, Esan North East Local Government Area, Edo State within the Judicial Division of this Honourable Court, and the said land is covered by Certificate of Occupancy No. BDSR 5662 registered as No. 42 at page 42 in Volume B74 at the Lands Registry Office at Benin City and more particularly delineated in survey plan No. MWC/1043/77 dated 26th July 1977, and wantonly destroyed the Claimant's rubber trees thereon, and the Defendants had commenced erection of various illegal structures on the Claimant's said land; and

(b) Perpetual injunction restraining the Defendants by themselves, their agents, assigns, and privies from entering into the Claimant's parcel of land measuring approximately 3.134 acres situate at Idumu-Esele Quarters, Along Idumu – Ekhuere – Utako Road, Off Taxona – Egbele Road in Uromi, Esan North East Local Government Area, Edo State within the Judicial Division of this Honourable Court, and the said land is covered by Certificate of Occupancy No. BDSR 5662 registered as No. 42 at page 42 in Volume B74 at the Lands Registry Office at Benin City and more particularly

delineated in survey plan No. MWC/1043/77 dated 26th July 1977 for any purpose whatsoever or doing anything at all thereat inconsistent or competing with the Claimant's rights and interest thereto.

In a civil suit, the burden is on the Claimant to satisfy the Court that he is entitled, on the evidence adduced by him, to the reliefs which he seeks.

The Claimant must rely on the strength of his own case and not on the weakness of the defendantôs 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. 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 appears to be relying on the second, third and fifth means of proof. To wit: ***proof by the production of documents of title; by acts of ownership; and acts of long possession and enjoyment of the land***

The Claimantôs documents of title which he tendered at the trial are: a certified true copy of a ***Deed of Assignment, a Survey Plan and a Certificate of Occupancy,*** all collectively admitted as ***Exhibit A***. The production of a certificate of occupancy is *prima facie* evidence of title. See the following decisions: ***Eso vs. Adeyemi (1994) 4 NWLR (Pt.340) 558 at 573; Ilona vs. Idakwo (2003) 11 NWLR (Pt.830) 53 at 84;*** and***Buremoh vs. Akande (2000) 15 NWLR (Pt.690) 260 at 286.***

On acts of ownership and possession, the Claimant stated that he became the absolute owner of the said parcel of land when the land was sold to him by Mr. Augustine Ujadughele now deceased. In further exercise of his ownership of the said land, he applied for the issuance of a certificate of occupancy, which was accordingly issued to him by the then Bendel State Governor in 1986. The Certificate of Occupancy No BDSR 5662 Registered as 42/42/B.74 was tendered as part of Exhibit A.

The Claimant immediately took possession of the said land by commissioning one Surveyor Chukwurah who surveyed the said land in the name of the Claimant. At the trial, he relied on his Survey Plan No. MWC/1043/77 dated 27th July, 1977 also contained in Exhibit A. He stated thathe has been in possession of the said land, employing workers who have been

maintaining the rubber plantation, and has let the said rubber plantation to various rubber tappers without any disturbance from anybody including the Defendants.

It is settled law that surveying a piece of land and placing survey beacons thereon constitute acts of possession which could be relied upon to prove title. See the cases of:***Basil vs. Fajebe (2001) 11 NWLR (Pt.725) 592 at 617-617***; and ***Thompson vs. Arowolo (2003) 7 NWLR (Pt.818) 163 at 232.***

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.***

At the trial, he led evidence of how he visited home during the festive period for the New Year celebration and discovered that the rubber trees on his land had been bulldozed, the debris carted away, with some illegal structures being erected on his land by the Defendants.That the 1st and 2nd Defendants even sold several portions of land to some unknown persons. The Defendants never controverted any of these facts at the trial.

Upon a careful evaluation of the unchallenged evidence adduced by the Claimant, I am of the view that the evidence is credible enough for me to hold that the Defendants carried out the alleged acts of trespass on the Claimantôs land.

The Claimant is claiming the sum of ***N500, 000,000.00 (five hundred million naira) as special and general damages*** for the Defendantsô 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, the Claimant adduced unchallenged evidence to prove the destruction of his rubber trees, the erection of some illegal structures on his land by the Defendants and the sale of several portions of land to some unknown persons.

Going through the evidence, I am of the view that the Claimant has suffered some losses which flowed naturally from the acts of trespass of the Defendants and is thus entitled to the award of general damages.

Regarding the Claimantôs claim for Special Damages, it is settled law that special damages will only be awarded if strictly proved and for this, the Claimant must sufficiently particularise it to enable the Court decide whether or not to grant it. See: ***Okoronkwo vs. Chukwueke (1992) 1 NWLR (Pt.216) 175;*** and ***Joseph vs. Abubakar (2002) 5 NWLR (Pt.759) 185 at 175.***

Thus, where a Claimant is claiming special damages as in the instant case, he must give the Defendants sufficient particulars of the special damages to enable them know the case he has to meet. See: ***NITEL vs. Ogunbiyi (1992) 7 NWLR (Pt.255) 543 at 549;*** and ***Artra Ind. Ltd. vs. N.B.C.I (1997) 1 NWLR (Pt.483) 574 at 596.***

Applying the foregoing principles to the instant case, it is evident that the Claimant did not give the Defendants sufficient particulars of the special damages in his pleadings. What he simply did was claim a lump sum of: ñ***N500, 000,000.00 (five hundred million naira) being special and general damages".*** In the absence of giving the particulars of the special damages, this approach was clearly wrong.

The consequence of this faulty approach was that in the absence of particulars of the special damages, it became impossible for him to lead evidence to strictly prove same. Thus, the claim for special damages was not supported by sufficient evidence.

On the claim for perpetual injunction, it is settled law that where damages are proved and payable for trespass, the Court ought to grant an auxiliary claim for injunction. See: ***Ibafon Co. Ltd. vs. Nigerian Ports Plc. (2000) 8 NWLR (Pt.667) 86 at 102; Balogun vs. Agbesanwa (2001) 17 NWLR (Pt.741) 118;*** and ***Onabanjo vs. Efunpitan (1996) 7 NWLR (Pt.463) 756 at 760-761.***

Also, 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 partially resolved in favour of the Claimant. The claims succeed in part and judgment is entered in favour of the Claimant as follows:

(a) ***The sum of N2,000,000.00 (two million naira) being general damages in that on or about the 3rd day of January, 2016, the Claimant discovered that the Defendants without the consent and/or authority of the Claimant broke onto the Claimant's parcel of land measuring approximately 3.134 acres situate at Idumu – Esele – Quarters, Along Idumu – Ekhuere – Utako Road, off Taxona – Egbele Road in Uromi, Esan North East Local Government Area, Edo State within the Judicial Division of this Honourable Court, and the said land is covered by Certificate of Occupancy No. BDSR 5662 registered as No. 42 at page 42 in Volume B74 at the Lands Registry Office at Benin City and more particularly delineated in survey plan No. MWC/1043/77 dated 26th July 1977,***

and wantonly destroyed the Claimant's rubber trees thereon, and the Defendants had commenced erection of various illegal structures on the Claimant said land; and

(b) ***Perpetual injunction restraining the Defendants by themselves, their agents, assigns, and privies from entering into the Claimant's parcel of land measuring approximately 3.134 acres situate at Idumu-Esele Quarters, Along Idumu – Ekhuere – Utako Road, Off Taxona – Egbele Road in Uromi, Esan North East Local Government Area, Edo State within the Judicial Division of this Honourable Court, and the said land is covered by Certificate of Occupancy No. BDSR 5662 registered as No. 42 at page 42 in Volume B74 at the Lands Registry Office at Benin City and more particularly delineated in survey plan No. MWC/1043/77 dated 26th July 1977 for any purpose whatsoever or doing anything at all thereat inconsistent or competing with the Claimant's rights and interest thereto.***

Costs is assessed at N10, 000.00 (ten thousand naira) in favour of the Claimant.

P.A.AKHIHIERO
JUDGE
30/10/18

COUNSEL:

Chief D.O.Okoh SANé é é é .é Claimant.

Unrepresented...é é é é é é é .é é é é é é é é é é é é é é é é é é Defendants.