

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.
ON MONDAY THE
27TH DAY OF JANUARY, 2020

SUIT NO: HCU/4/2016

BETWEEN:

1. SMART OBOH
2. CHRISTOPHER OBOH
(Suing through their Lawful Attorney
(MR MICHAEL OBOH) }CLAIMANTS

AND

1. MR. MONDAY EHIDIAMHEN }DEFENDANTS
2. MR. DAVID EHIDIAMHEN }

JUDGMENT

The Claimants instituted this suit *vide* a Writ of Summons and Statement of Claim dated and filed on the 29th of January, 2016, claiming as follows:

- (i) A declaration of this Honorable Court that the claimants are the proper persons entitled to apply for and be granted statutory rights of occupancy in respect to two pieces/parcels of land measuring approximately 100ft by 100ft each lying and situate at Idumu-Ihanza, Amedokhian Uromi, an area within the jurisdiction of this Honorable Court;
- (ii) The sum of ₦500,000.00 (five hundred thousand naira) only being general damages for acts of trespass by the defendants into the said pieces/parcels of land without the consent and authority of the claimants; and
- (iii) A perpetual injunction restraining the defendants, their agents, privies, and servants from further interfering with the said pieces/parcels of land.

Upon the service of the claimant's court processes on the defendants, they entered appearance, filed their joint statement of defence and the suit was fixed for hearing.

At the hearing, three witnesses testified for the claimants. The first witness was the Claimants' Attorney, Mr. Michael Oboh. He adopted his written deposition, tendered Exhibits "A", "B", "C" and "D" and was cross-examined by the defendants' Counsel.

In his evidence, the Claimants' Attorney testified that the Claimants are the owners of the two parcels of land each measuring approximately 100ft by 100ft. That as the Claimants' Attorney, he acquired the said parcels of land from one Mr. Abraham E. Momoh, who testified as CW2, vide two separate purchase receipts dated 15th and 20th of May, 2013 respectively tendered as Exhibits "B" and "C" at the trial.

He further told court that the said vendor earlier acquired the said parcels of land originally measuring 100ft by 200ft, from the defendants' father, Pa Ehidihamhen Owobu, now deceased, through a Deed of Transfer, tendered as purchase receipt, Exhibit "D" dated 10th of April, 2017. He stated that late Pa Ehidihamhen Owobu, inherited the land in dispute, which originally formed a larger expanse of land, from his deceased father, Pa Owobu in accordance with Esan Native Law and Custom of Amedokhian, Uromi.

The Claimants' Attorney stated that after he had inspected the land and investigated the title of Pa. Ehidihamhen Owobu, he instructed a lawyer, B.E. Emiowe, Esq to prepare Deeds of Transfer, which he tendered as purchase receipts dated 15th and 20th of May, 2013 as Exhibits "B" and "C" respectively.

The witness stated that after the purchase of the parcels of land, the Claimants have been in possession of same through him, as their Attorney until when the first defendant trespassed therein on the allegation that the said parcels of land belongs to the 2nd defendant. He informed the court that the defendants did not challenge the claimants' right of ownership of the parcels of land in dispute during the lifetime of their father, who died sometime in February, 2015 until sometime in August, 2015 when they started to lay claim to the parcels of land.

He stated that the defendants have continuously threatened him owing to the Claimants' refusal to part with extra sum of money demanded by the defendants in respect of the parcels of land now in dispute. That it was owing to the defendants' persistent acts of trespass unto the parcels of land in dispute which prompted the claimants to donate a Power of Attorney, Exhibit "A" to him on the 14th of October, 2015 to institute an action in court against the defendants for declaration of title, damages and injunction.

He maintained that the claimants' vendor, Mr. Abraham E. Momoh, lawfully acquired the parcels of land now in dispute, from the defendants' father and the claimants in turn acquired lawfully from their vendor.

He stated that the 1st claimant's parcel of land is bounded at the front by an access road, at the back it is bounded by Pa. Ehidihamhen Owobu, on the right formerly, by Mr. Abraham E. Momoh, but now by the 2nd claimant's land and on the left by Mr. Ehidihamhen Owobu's parcel of land.

The witness stated that the 2nd Claimant's parcel of land is bounded at the front by the access road, at the back by Mr Ehidihamhen's parcel of land, on the right, by Mr. Ehidihamhen Owobu's parcel of land, and on the left, by the 1st Claimant's parcel of land. He told court that the defendants have no property right and interest over the parcels of land now in dispute.

Thereafter, Benson Emiowe Esq. and testified and was cross-examined by the Defendants counsel. In his evidence, he stated that he knows the two parcels of land measuring approximately 100ft by 100ft each lying and situate in Idumu-Ihanza, Amedokhain Uromi.

That on the 15th of May 2013, the claimants' attorney, Michael Oboh came to his office and informed him that he wanted to purchase two parcels of land measuring 100ft by 100ft from

Abraham E. Momoh for the claimants and that he should prepare two separate deeds of transfer to cover the said transactions.

That he went to the vendor, Abraham. E. Momoh at Uromi and he interviewed him about the proposed purchase of the land. That he also visited the land for inspection and investigation of title and confirmed that the land belonged to Abraham. E. Momoh, the claimants' vendor.

The witness also visited the residence of Pa. Ehidiamhen Owobu to confirm that he initially sold the said parcels of land to Abraham. E. Momoh before he prepared the two Deeds of Transfers which were duly executed by the parties.

The third witness was Abraham Momoh. He confirmed that he was formerly the owner in possession of the parcels of land in dispute. That he acquired the land through purchase from the defendants' father Pa. Ehidiamhen Owobu vide a Deed of Transfer dated the 10th of April 2012 admitted as Exhibit "D" in these proceedings. That on the 15th and 20th of May 2013 respectively, he transferred ownership of the said parcels of land to the claimants in two separate Deeds of Transfers each measuring 100ft by 100ft.

The witness emphasized that while the defendants' father was alive, the defendants did not lay ownership claims to the parcels of land now in dispute until his death sometime in February 2015. That the defendants are laying false ownership claims to the land in dispute knowing fully well that their father had transferred his interest in the land before his demise.

The Claimants thereafter closed their case and the matter was adjourned for defence. The suit suffered a series of adjournments at the instance of the defendants and their Counsel and was adjourned to the 4th of December, 2018 for definite defence. On the said date, the defendants and their counsel were again absent from court and the court foreclosed the defendants and the suit was adjourned for final written address.

Only the learned counsel for the Claimants filed a Written Address which he adopted on the date fixed for address.

In his Final Written Address dated 8th February, 2019, filed on the 11th of February, 2019, the learned counsel for the Claimants, *D.V. Okojie Esq.* formulated a sole issue for determination as follows:

WHETHER THE CLAIMANTS HAVE LED CREDIBLE EVIDENCE IN PROOF OF THEIR CLAIM ENTITLING THEM TO THE JUDGEMENT OF THIS HONOURABLE COURT.

Arguing the sole issue, learned counsel submitted that the Claimants have led credible and unchallenged evidence in proof of their claim. That the Claimants have established their ownership claims to the parcels of land in dispute situate at Idumu-Ihanza, Amedokhian, Uromi through authentic documents of title vide Exhibits "B" and "C. He further submitted that Exhibit "D" which the claimants tendered was duly executed between their vendor, Abraham E. Momoh and Pa Ehidiamhen Owobu. That the said Exhibit "D" legally transferred the parcel of land to the CW2.

Counsel submitted that Pa Ehidiamhen Owobu inherited the land from his late father, Pa. Owobu, which he sold to CW2. That during the lifetime of late Pa. Ehidiamhen Owobu, the CW2 enjoyed exclusive possession of the said parcel of land without any challenge from the defendants. That each of the Claimants exercised exclusive possession over his portion of the land, until after the death of Pa. Ehidiamhen Owobu, the defendants' father, when the 1st

defendant suddenly trespassed therein maintaining that the land in dispute belonged to the 2nd defendant, who in this suit never attended court and did not file any statement on oath to that effect.

Learned counsel submitted that the acts of possession by the CW2 during the lifetime of his vendor, Pa. Ehidiamhen Owobu, without challenge from the defendants or anybody at all, is indicative of his ownership of the said land which he rightfully transferred to the claimants.

He further submitted that Exhibit “D” the Deed Of Transfer between Abraham E. Momoh, CW3, the claimants’ vendor and Pa. Ehidiamhen Owobu, which conferred possession and absolute right of control and ownership over same land on CW2, without challenge from anybody, including the defendants, over a period of time, until after the death of their father, Pa. Ehidiamhen Owobu, is sufficient to warrant a reasonable inference of positive acts of ownership on the part of the CW2 and that he rightfully transferred ownership to the claimants vide Exhibits “B” and “C” who also maintained exclusive right of possession and ownership over the same land. See: the case of *Onisese v Oyeleye (2008) 21WRN page.43 at page.48*.

Counsel submitted that the evidence led by the Claimants which was corroborated by CW1 and CW2 was never challenged by the defendants. On effect of unchallenged evidence, he cited the case of: *Abeke v State (2007) 3 FWR p5037 at p5039 ratio 1*.

Again, he submitted that no aspersion was cast on the evidence of the claimants by the defendants in order to weaken its potency and credibility. That the best time to cast aspersion on the evidence of a witness is during cross-examination and not afterward. See: the case of *RCC(Nig) Ltd V Edomwonyi (2003) 4NWLR (Pt 811) page 513 at page 519*.

Learned counsel submitted that a party seeking declaration of title has the onus to discharge his evidential burden of proof by establishing his case on the preponderance of evidence and where as in this case, the defendants failed to lead evidence or challenge the evidence of the claimants and their witnesses, the burden of proof on the claimants becomes minimal. See the case of: *Abuul V Bensu (2003) 16 NWLR (Pt845), page 59 at page 67*.

He further submitted that by their refusal to defend the claim the defendants are deemed to have fully admitted the case of the claimants in proof of their claim. That it is trite law that what is admitted needs no further proof. See the case of: *Adjarho V Agbanelo (2015) 7 WRN page 166 at page 182 line 40*.

He submitted that apart from tendering Exhibits “B”, “C” and “D” to establish their equitable interest on the land in dispute, the claimants went further to prove the source of the vendor’s title through credible and satisfactory evidence in line with the case of: *Akulaku V Yongo (2002) 94 LRCN page 317 at page 319*.

Counsel posited that there was unchallenged evidence from Benson Emiowe Esq that he visited the residence of Pa. Ehidiamhen Owobu to confirm that he initially sold the parcels of land measuring 100ft by 200ft to Abraham E. Momoh. On the effect of unchallenged and uncontroverted evidence, he cited the case of: *Abuul V Bensu (2003) 16 NWLR (Pt845) page 59 at page 68*.

He submitted that the slightest form of possession such as cultivating of a piece of land, erection of a fence thereon and demarcation of same with pegs or survey beacons may be sufficient acts of possession in certain cases. See the case of: *Adeniran V Alao (2002) 4 WRN, page 1 at page 9.*

On the issue of general damages, counsel submitted that general damages are presumed to be the direct, natural and probable result of the acts complained of by the claimants. That in the instant case, the claimants told the court that the defendants trespassed unto the land in dispute and prevented their Attorney from entering the said land. That general damages can be awarded even when the court cannot point out any measure of assessment except what it can hold in the opinion of a reasonable man. He therefore submitted that since the acts of the Defendants prevented them from entering the land in dispute, they have suffered some losses which flowed from the conduct of the defendants so the Claimants are entitled to general damages as per their claim. On meaning of general damages, he referred the Court to the case of: *Ya'u V Dikwa (2001) FWLR (Pt62) page 1987 at page 2005, paras. C.D.*

He submitted that since the Claimants have led credible and unchallenged evidence in proof of their claim, the sole issue for determination should be resolved in their favour. On meaning of credible evidence, he referred to the case of: *Agbi V Ogbeh (2005) 8 NWLR(Pt 924) page 40.*

On the status of the statement on oath of the 1st defendant learned counsel submitted that since the said written deposition was not adopted to assume the character of evidence to be considered and evaluated by this Honourable Court, same should be discountenanced in its entirety as if it never existed in the first place. See the case of: *Ibrahim V Okutepa (2005) All FWLR(Pt785) page 331 at page 336.*

In conclusion, he urged the Court to enter judgment in favour of the claimants as per their claim.

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

As I have already observed, the Defendants did not put up any defence to this suit. Thus, the evidence of the Claimants 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 Claimants have adduced admissible evidence which is satisfactory in the context of the case, and none is available from the Defendants, the burden on the Claimants 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 Claimants 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 still 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 Claimants are entitled to the reliefs claimed in his this suit.

For the avoidance of doubt the Claimants' claims are as follows:

- (i) A declaration of this Honorable Court that the claimants are the proper persons entitled to apply for and be granted statutory rights of occupancy in respect to two pieces/parcels of land measuring approximately 100ft by 100ft each lying and situate at Idumu-Ihanza, Amedokhian Uromi, an area within the jurisdiction of this Honorable Court;
- (ii) The sum of ₦500,000.00 (five hundred thousand naira) only being general damages for acts of trespass by the defendants into the said pieces/parcels of land without the consent and authority of the claimants; and
- (iii) A perpetual injunction restraining the defendants, their agents, privies, and servants from further interfering with the said pieces/parcels of land.

In a claim for a declaration of a right of occupancy to land, the burden is on the Claimants to satisfy the Court that they are entitled, on the evidence adduced by them, to the declarations which they seek.

The Claimants must rely on the strength of their 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. Udeaja (1990) 1 NWLR (Pt.125) 188*; and *Anabaronye & Ors. vs. Nwakaihe (1997) 1 NWLR (Pt.482) 374 at 385*.

In the instant suit, the Claimants appear to be relying on proof by traditional evidence; by the production of documents of title; by proving acts of ownership; and by acts of long possession and enjoyment of the land.

On traditional history, the Claimants led evidence of the traditional history of the land in dispute from the period of Late Pa Ehidihamhen Owobu who inherited the land in dispute which originally formed a larger expanse of land, from his deceased father, Pa Owobu in accordance with Esan Native Law and Custom of Amedokhian, Uromi. The said Pa Ehidihamhen Owobu later sold the parcels of land in dispute to Mr. Abraham E. Momoh (C.W.2) vide Exhibit “D” and Mr. Abraham E. Momoh eventually sold the land to the Claimants vide Exhibits “B” and “C”.

This evidence of traditional history of the land was neither challenged nor debunked by the Defendants. Thus, it 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 proof by the production of documents of title the Claimants tendered several Deeds of Transfers as purchase receipts, admitted as Exhibits “B”, “C” and “D” already mentioned in this judgment.

On acts of ownership and long possession and enjoyment of the land, the Claimants led unchallenged evidence that during the lifetime of late Pa. Ehidihamhen Owobu, the CW2 enjoyed exclusive possession of the said parcel of land without any challenge from the defendants. That when they purchased the land, they continued to exercise exclusive possession of the land without any challenge or interference from anyone until after the death of the defendants’ father, when the 1st defendant suddenly trespassed therein.

. All these acts of ownership and possession were unchallenged at the trial. Acts of possession are one of the ways of proving title to land. See: *Section 35 of the Evidence Act, 2011* and the case of: *Alikor vs. Ogwo (2010) 5 NWLR (Pt.1187) 281 at 312*.

I agree with the submission of the learned counsel of the Claimants that the unchallenged evidence before this Court that the claimants and their predecessors in title have been exercising exclusive possession is further proof of their ownership of the land in dispute.

In proof of the acts of trespass, the Claimants adduced evidence that sometime in August 2015 the 1st defendant trespassed onto the land maintaining that the land in dispute belongs to the 2nd defendant. That the defendants have continuously threatened the Claimants' Attorney to pressurize the Claimants to part with some extra sum of money demanded by the defendants in respect of the parcels of land, now in dispute.

On the claim for N500,000.00 (five hundred thousand naira) general damages for trespass on the claimants' lands, it is settled law that General Damages are presumed by law as the direct natural consequences of the acts complained of by the Claimants against the Defendants.

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 depend on the evidence of what the Claimant has suffered from the acts of the Defendants.

In the instant case, going through the entire gamut of the Claimants' case, there is no evidence of anything they actually suffered from the actions of the Defendants.

It is usual in cases such as this, where the Claimants have 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 Claimants are only entitled to nominal damages.

On the claim for perpetual injunction, it is settled law that where damages are awarded for trespass, and there is an ancillary claim for injunction, the Court will grant perpetual injunction. This is the situation in the instant suit. The Court ought to grant the ancillary claim for injunction. See the following decisions on the point: *Obanor vs. Obanor (1976) 2 S.C.1; Ibafor 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.*

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

- (i) A declaration of this Honorable Court that the claimants are the proper persons entitled to apply for and be granted statutory rights of occupancy in respect to two pieces/parcels of land measuring approximately 100ft by 100ft each lying and situate at Idumu-Ihanza, Amedokhian Uromi, an area within the jurisdiction of this Honorable Court;*
- (ii) The sum of ₦300,000.00 (three hundred thousand naira) only being general damages for acts of trespass by the defendants into the said pieces/parcels of land without the consent and authority of the claimants; and*
- (iii) A perpetual injunction restraining the defendants, their agents, privies, and servants from further interfering with the said pieces/parcels of land*

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

P.A.AKHIHIERO
JUDGE
27/01/2020

COUNSEL:

D.V.Okojie Esq.....Claimants

Unrepresented.....Defendants