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 WEDNESDAY THE 13TH DAY OF MAY, 2020.

BETWEEN SUIT NO. HCU/1/2018

MR. JOELLIN BLESSING OYAMIENLEN………………CLAIMANT

AND

MR. GODWIN EHIMHEGBE…………………………..…DEFENDANT

JUDGMENT

The Claimant claims vide his Statement of Claim against the Defendant as follows:

a) A declaration that the Claimant is the person entitled to apply and be granted a statutory right of occupancy over that piece or parcel of land measuring 44ft X 41ft X 38ft X 25ft lying, situate and being along Igene street Oyomon Quarters, Uromi having common boundaries in the front by Igene street , at the back by the Claimant's land, at the right side by the house or premises of the Defendant and at the left side by Edion Edebhalo which parcel of land the Claimant purchased from the defendant on the 19th February,1973;

b) Perpetual injunction restraining the Defendant by himself, his agents privies and assigns upon further trespass upon the said land;

c) An order of this Honourable court compelling the Defendant by himself, his agents, servants' privies and assigns to remove the blockage preventing the free flow of flood from the junction of Okhualen road junction along Igene Street to empties into the collecting drainage after the Defendant's house;

d) An order compelling the Defendant by himself, his agents, servants privies and assigns to block the flood channel / drainage constructed upon the Defendant's land;

e) The sum of ₦5, 000.000.00 Million being general and special damages.

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General damages _________	2,100.000.00

Special Damages

(i)12 tipper loads of sand washedaway by flood @ ₦15, 000.00 per one	180,000.00
(ii)2 tipper loads of granite @₦45, 000.00 per trip	90.000.00
(iii)Cost of restoring the degraded portion of land	1,630,000.00
Total =	5, 000,000.00

At the trial, the Claimant testified on oath and tendered three documents to wit: land purchase receipt between Mrs. Felicia Eichie and the Claimant dated 8th January, 1973 admitted as Exhibit "A"; land purchase receipt between Mr. Ugboke Azeke and the Claimant dated 19th February, 1973 admitted as Exhibit "B"; and land purchase receipt between Mr. Godwin Ehimhegbe (Defendant) and the Claimant dated 19th February, 1973 which was admitted as Exhibit "C".

In his testimony, the Claimant stated that he is the owner of the piece or parcel of land measuring 44ft x 41ft x 38ft x 25ft lying, situate and being along Igene street/lane, Oyomon Quarter/Village, Uromi a place within the jurisdiction of this Honourable Court. That the parcel of land is bounded in the front by Igene lane/street, at the back by the land belonging to him, at the right by the land of the Defendant and on the left by the land of Mr. Edion Edebhalo. He stated that this parcel of land forms part of the parcel of land which he purchased in 1973 from Mrs. Felicia Eichie, Mr. Ugboke Azeke and the Defendant. He said that the purchases were made as follows:

a) On the 8th of January, 1973 he purchased a parcel of land from Mrs. Felicia Eichie of Id. Odeva Amedokhian, Uromi which land measured 112ft x 50ft x 71ft x 672ft x 22ft x 14ft x 35ft lying, situate and being at Oyomon Village, Uromi which land then shared common boundaries with the parcel of land on the left with Veronica Igberase, on the right with Eigbiremiolen Okoh, at the back Ugboke Azeke and in the front by Mrs. Felicia Eichie for the sum of ₦170,00 (one hundred and seventy naira);

b) (i) On the 19th day of February, 1973 he purchased the parcel of land sharing common boundaries at the back with the land sold to him by Mrs. Felicia Eichie from Mr. Ugboke Azeke for the sum of ₦150,00. (one hundred and fifty naira);

(ii) That the land he purchased from Ugboke Azeke shared common boundary with Mr. Akue Okokhere on the left, right with Lawrence Unuane, at the back Ugboke Azeke and at the front Mrs.Veronica Igberase which land measures 115ft X 96ft x 89ft X 61ft;

c) (i) that on the 17th February 1973 while the Claimant and Ugboke Azeke were measuring out the land referred to in paragraph b (i) and (ii) above, and after demarcating same with cutlass, the Defendant came upon them claiming

that a portion of the land so demarcated was his own which claim Ugboke Azeke denied but the Defendant was still raising a lot of dust.

(ii) That the Claimant told the Defendant to allow the demarcated portion of land to be measured out first and that he would settle with the Defendant whatever portion he claimed to be his own if he had the mind to sell which suggestion the Defendant accepted.

(iii)That after the measurement, he told Mr. Ugboke Azeke (now late) not to worry and that he would still pay him the agreed sum notwithstanding the portion the Defendant was claiming to be his own and Mr. Ugboke Azeke also agreed.

(iv)That Claimant and the Defendant measured out the portion the Defendant claimed to be his own out of the total land which measured 44ft X 41ft X38ft X25ft and the sum of N100.00 (one hundred naira) was agreed as the purchase price.

(v)That after paying Ugboke Azeke, he paid the Defendant the said sum of N100.00(one hundred naira) as purchase price for the land which measured 44ft X 41ft X38ft X25ft and a receipt was issued to him by the Defendant.

He said that the land which he purchased from the Defendant has common boundaries at the back with him, at the front with the Defendant at the left side with Edion Edebhalo and at the right side with the Defendant. That a few years after the purchase of the land from the Defendant, a street was constructed from Okhenlen road cutting across where he had boundary with the Defendant in the front but leaving the land of the Claimant intact which road /street is now known as Igene street.

That the constructed street or lane is now known and called Igene street hence the land now has common boundaries in the front by Igene street, behind his land at the left side by Edion Edebhalo and at the right side by the Defendant.

He said that he erected a building on the portion he purchased from Mrs. Felicia Eichie where he is presently living with his family. That he is erecting a building on the portion purchased from Ugboke Azeke which building is facing Igene street leaving the portion purchased from the defendant as the entrance space and part of the premises.
That prior to the purchase of the land from the defendant there was and there is still a wild mango tree on the land and when he wanted to cut it down in the year 2010, the Defendant told him that he must pay him before cutting it down and he paid him N20,000.00 (twenty thousand naira).

That the Defendant refused to allow him cut down the mango tree and tacitly instigated one Sunday Akhue to sue him in Suit No. HCU/1/2011: Sunday Akhue vs. Joellin Oyamielen at the High Court of Justice, Uromi claiming ownership of the land in dispute in this suit. That when Mr. Sunday Akue realized that the action was an exercise in futility, he withdrew the said action.

He said that the Defendant and his cohorts who have houses along Igene street instead of allowing flood water to flow freely along Igene street, they blocked the free flow of flood water, instead directed the flood to his land and premises and all pleas to allow free flow of flood to a big channel which is after the land of the Defendant and other houses after the Defendant's house fell on deaf ears. He said that the diversion of

flood has caused extensive damage to his land and buildings. That 12 trips of tipper load of sand and 2 trips of granite he put on the land where he erected a building were washed away by flood between April and August, 2017.

He said that the Defendant is now claiming the very land which he sold to him as he wants to eat his cake and still have it. That in the year 2010 or thereabout he summoned the Defendant before the Elders of Oyomon Quarter Uromi in respect of the false claim by the Defendant to the land in dispute. That at the gathering of the Elders, he brought out the original copy of the purchase receipt to show the Elders and the Defendant snatched it from him, tore it into pieces, put the pieces into his mouth, chewed it and ran away.

After the Claimant concluded his testimony in chief, the Court adjourned the cross-examination by the Defendant and ordered that hearing notice be served on the Defendant which order was complied with yet the Defendant failed to appear in court.

All through the trial, the Defendant did not file any process, neither did he defend the suit. At the close of evidence, the Claimant's counsel filed a Written Address.

In his Written Address, the learned counsel for the Claimant, ***M.A.Agbonhiebuele Esq.*** formulated no issue but addressed on the evidence.

Opening his arguments, he submitted that in all civil cases as in this instant case the burden of proof which is the preponderance of evidence lies squarely on the Claimant who must succeed on the strength of his case. He referred to the case of ***OWIE Vs. IGHIWI (2005) Vol. 124 LRCN page 505 at 535*** where the Supreme Court held as follows:

"***Proof in a civil case is on the balance of probability or on preponderance of evidence as to the Claim before the court and judgment will be given to the party that the evidence tilts in favour in the case. In determining either balance of probability or preponderance of evidence, the trial Judge is involved in some weighing by resolving to the imaginary scale of justice as adumbrated in MOGAJI V. ODOFIN (1978) 3 SC 19".***

Learned counsel submitted that in all civil cases, the failure of the Defendant to testify as in this instant case cannot alleviate the primary burden on the Claimant since the person who asserts must prove.

See the following cases:

1.***Umeojiaku Vs Ezenamuo (1990) 1SCNJ 181***

2.Olagunju V. Yahaya 82005) ALL FWLR part 247 page 1466 (at 1485. Para. A)

He further submitted that a claim for declaration of title to land may be proved by any of the five ways as follows:

1. By Traditional Evidence;

2. By production of documents of title which must be duly authenticated;

3.By the exercise of numerous and positive acts of ownership over sufficient length of time to warrant the inference that the person is the true owner of the land;

4.By acts of long possession and enjoyments of the land; and

5. 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.

See the following cases:-

1.Orianzi Vs. A-G Rivers State & ors (2017) vol271 LRCN page 150 at 189FEE.

2.Oyadare Vs. Ikaji (2005) ALL FWLR (page 247) page 1583 at 1596 (paras E-G)

3.Otukoya Ashiru (2006) ALL FWLR (pt 322) 1479.

He submitted that in the instant case, the Claimant is relying on all the methods of proving title to land save or except by traditional history. He posited that the Claimant purchased the parcel of land in dispute from the Defendant on the 19th February, 1973 in respect of which Exhibit "C" purchase receipt was issued to him by the Defendant. He said that he explained the whereabouts of the original copy in paragraphs 19 of the statement of Claim and 20 of his statement on oath hence he tendered a copy of it.

Counsel submitted that the Claimant by his pleadings and statement on oath in paragraphs 4, 6, 8, 9 and 20 (a) and paragraphs 2, 6,9,10 and 21 respectively, shows that the land behind the land in dispute belongs to him and that is where he is erecting a building. That the land in dispute is the entrance and part of his premises.

He submitted that it is a settled law that in a claim for a declaration to title to land, the Claimant must plead and prove clearly the area to which his claim relates and the boundaries thereof and if the location and size is in dispute (though not in this case) the Claimant must prove same. He maintained that proof of the identity of the area in dispute is a sine qua non to establishing a case of declaration of title to land.

See the following cases:-

1. Dada V. Dosumu 82006) 12 M.J.S.C . page 115 at (pp 141 – 142) paras B – G

2. Ansa V. Ishie (2005) vol. 129 LRCN page 1657 at pp 1672EE & 1673A.

He posited that in the instant case, the Claimant claimed title to an area measuring 44ft x 41ft x 38ft x 25ft lying, situate and being along Igene Street/lane, Oyomon Quarter/Village, Uromi, sharing common boundaries in front by Igene street/Lane, at the back by the land of the Claimant, on the right by the land of the

Defendant and on the left by the land of Edion Edebholo with a mango tree thereon which economic tree he paid for or purchased from the Defendant for the sum of ₦20,000.00 (twenty thousand naira) in 2010. He said that these facts and evidence are stated in paragraphs 3, 4, 8 and 20 of the statement of claim and paragraphs 4, 5,9,11 and 21 of the evidence on oath respectively.

He submitted that the Defendant failed to file a statement of defence and further failed to cross-examine the Claimant in spite of the hearing notice served on him. He submitted that a litigant who fails to file a statement of defence and further fails to cross-examine the adverse party, as in this case, the Defendant has by shut himself out from the proceedings. He maintained that the Defendant, abandoned any defence he might have, and the court is expected to accept the Claimant's unchallenged evidence to establish his case. See the case of ***CBN & Ors vs. Okojie (2015) Vol 250 LRCN page 44 at 83 UK.***

He urged the court to hold that the Defendant abandoned the proceedings and to accept the facts and evidence relating to his claim to a declaration of title to the land in dispute in this suit and grant the relief sought.

Learned counsel submitted that trespass to land is a wrongful entry into land in actual or constructive possession of another. That a claim for trespass connotes interference or injury to possession. That it is rooted on exclusive possession or right to possession and all the Claimant needs to prove is that he has exclusive possession of the land in dispute. See the following cases.

1. ***Oyebanji V. Fabiyi (2003) 12 NWLR (Pt. 834) 271, 290***
2. ***Eneh V. Ozor & anor (2017) Vol 263 LRCN 60, 80f***
3. ***Provost Lagos State College of Education & Ors V. Edun &Ors (2004) Vol 116 LRCN 3483, 3496 Ky***
4. ***Amakor V. Obiefuna (1974) NMLR 331***
5. ***Dantsoho V. Mohammed (2003) 6 NWLR (pt.817) 457, 488***

He posited that the Claimant as per his statement of claim, evidence on oath and Exhibit "C" has shown not only that he is the owner of the land in dispute but that he has been in exclusive, physical and effective possession of the land in dispute and that this land in dispute forms part of his premises where he is erecting a building. That these pieces of evidence can be gleaned from paragraphs 5 c (v) and 9 of the statement of claim and paragraphs4, 6 c (iv) and 10 of the Claimant's statement on oath.

He contended that this exclusive ownership and possession of this land by Claimant is been interfered with by the Defendant who has constructed a flood drainage into his land such that the land is always flooded whenever it rains.

Furthermore, the Defendant is also claiming the land which he had already sold to the Claimant on the 1 which act he alleged amounts to interference with the land in dispute.

He submitted that it is settled law that a trial court as in the instant case is entitled to rely on the uncontroverted, unchallenged and uncontradicted evidence of a Claimant. That in such situation there is nothing to put on the proverbial imaginary scales and the onus of proof is naturally discharged on a minimum proof. See the following cases.

1. ***Dodo V. Solanke (2006) 9 NWLR (pt 986) 447, 472 (paras B – G)***
2 SPDC Nig Ltd V. Edarnuke (2009) vol 176 LRCN 1,32EE.

He submitted that the Claimant is entitled to an injunctive order against the Defendant by himself, his agents, servants, privies and assigns from further trespassing unto the land in dispute in this suit. That it has been shown that the flooding of the Claimant's land is not an act of nature but the handiwork of the Defendant and his cohorts by constructing a deep flood drainage and diverting the flood to his land thereby rendering the land useless, threatening the building thereon and making same uninhabitable. He said that refusal to grant reliefs 21 (c) and 20 (d) will make reliefs 21 (a) and (b) if granted to be of no moment and it will be comparable to a man who goes to the stream with a basket to fetch water.

On damages, he submitted that it is not in dispute that the Claimant made a claim for special and general damages in paragraph 20 (e) e (i), (ii) and (iii) making a total sum of ₦5,000.000.00 (five million naira) under different subheads.

He posited that the law is well settled, that special damages must be specifically pleaded with distinct particularity and it must be strictly proved. That the nature of proof depends on the circumstances of each case.

See the following cases.

1. ***Neku w Ltd V A.C.B Ltd (2003) 115 LRCN 2449***
2. ***Osuji V. Isiocha (1989) 6 SC (pt II)1,***
3. ***Eneh V. Ozor & Anor Supra P.78 (paras pz)***

He submitted that the Claimant led evidence to prove the damages he suffered demonstrating the nature. That the sand and granite put on the land was washed away by flood which entered his land as a result of the acts of the Defendant and the cost of restoring the land to the position it was before the act of the Defendant of diverting flood to it.

In respect of general damages he submitted that unlike special damages, general damages need not to be pleaded or proved. That the manner in which

general damages is quantified is that of a reasonable man's judgment. He submitted that in a case of declaration of title to land, once trespass is found to have occurred, general damages follows and this Court should also take into account that the claimant hired the services of a Solicitor in this suit, paid filing fees and made other ancillary expenses and that these damages were not denied or challenged.

In conclusion, he submitted that the Claimant has succeeded in proving his case by credible and legally admissible evidence which was not controverted and he should be granted all the reliefs sought.

The learned counsel for the Claimant addressed this Court and soon after the matter was adjourned for judgment, the Covid 19 Pandemic resulted in the indefinite shutting down of courts across the nation. Consequently, this Court was unable to deliver its judgment within the period of ninety days as stipulated by Section 294(1) of the 1999 Nigerian Constitution.

However by virtue of Section 294 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the judgment of a Court cannot be set aside solely on the ground that it was delivered outside the ninety (90) days period after final addresses unless the party complaining has suffered a miscarriage of justice. See ***N.B.C vs. Okwejimino (1998) 8 NWLR Pt 561 Page 295 at 305 paragraphs B-G; Ogundele vs. Fasu (1999) 9 SCNJ Page 105 at 112 Paragraphs 10-30; and MR. S.C. OKAFOR v. SPRING WATER NIGERIA (SWAN) LIMITED (2014) LPELR-24147(CA).***

Consequently, for the aforesaid reasons and pursuant to the provisions of Section 294 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), this judgment is being delivered after the expiration of the period of ninety days.

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 Claimant.

As I have already observed, the Defendant did not put up any defence to 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, 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 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 Claimant is entitled to the reliefs claimed in this suit.***

In a claim for a declaration of title 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. 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 Claimant's counsel informed the Court that they are relying on all the methods of proving title to land except proof by traditional history.

To resolve the sole issue for determination, I will start with the proof by the production of documents of title. At the trial, the Claimant stated that this parcel of land forms part of the parcel of land which he purchased in 1973 from Mrs. Felicia Eichie, Mr. Ugboke Azeke and the Defendant. He said that the purchases were made as follows:

i. On the 8th of January, 1973 he purchased a parcel of land from Mrs. Felicia Eichie of Id. Odeva Amedokhian, Uromi which land measured 112ft x 50ft x 71ft x 672ft x 22ft x 14ft x 35ft lying, situate and being at Oyomon Village, Uromi which land then shared common boundaries with the parcel of land on the left with Veronica Igberase, on the right with Eigbiremiolen Okoh, at the back Ugboke Azeke and in the front by Mrs. Felicia Eichie for the sum of ₦170,00 (one hundred and seventy naira). The purchase receipt was admitted as Exhibit A at the trial;

ii. On the 19th day of February, 1973 he purchased a parcel of land sharing common boundaries at the back with the land sold to him by Mrs. Felicia Eichie from Mr. Ugboke Azeke for the sum of ₦150,00. (One hundred and fifty naira). The purchase receipt was admitted as Exhibit B at the trial;

iii. That on the same 19th February, 1973 he purchase a parcel of land from the Defendant in respect of which Exhibit "C" purchase receipt was issued to him by the Defendant.

Exhibit C which is a photocopy of the receipt of purchase was duly tendered after the Claimant laid the foundation by explaining how the Defendant dramatically destroyed the original receipt by chewing it in his mouth during a settlement meeting. This evidence of purchase and issuance of a receipt of purchase was not controverted by the Defendant at the trial and I therefore hold that the Defendant actually sold the land to the land to the Claimant and issued him Exhibit C.

Upon a careful examination of Exhibits A, B and C, I observed that they are actually Agreements for the purchase of land by the Claimant from the some individuals including the Defendant. I think the reason why the Claimant tendered them as a mere purchase receipts is because the said agreements are registrable land instruments which have not been registered. The law is settled that where a purchaser of land has paid and taken possession of such a land without registering the Agreement, he acquires an equitable interest in the property which is as good as a legal estate. Such an equitable interest can only be defeated by a purchaser for value without notice of the prior equity. See: ***Agboola vs. United Bank for Africa Plc. (2011) 11 NWLR (Pt.1258) 375 at 415; Dauda vs. Bamidele (2000) 9 NWLR (Pt.671) 199 at 211; and Nsiegbe vs. Mgbebemena (1996) 1 NWLR (Pt. 426) 607 at 622.***

Applying the foregoing principle to the instant case, it is pertinent to note that the Claimant led unchallenged and uncontroverted evidence to prove that after he paid the purchase prices to the various vendors (the Defendant inclusive), he took possession of the lands and has been in possession ever since. In the event I hold that the Claimant has acquired an equitable interest in the property which is as good as a legal estate. Such an equitable interest can only be defeated by a purchaser for value without notice of the prior equity. His interest cannot be defeated by the Defendant who sold the land to him for valuable consideration. It will be morally unconscionable and inequitable for the Defendant to attempt to reclaim the land after receiving valuable consideration from the Claimant. I agree with the learned counsel for the Claimant that the Defendant cannot eat his cake and have it.

In the event, I hold that the Claimant has proved his title to the land in dispute by the production of his documents of title. The remaining means of proof are proofs by acts of ownership; by 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 by acts of long possession and enjoyment of the land.

It is settled law that a Claimant relying on acts of ownership and possession of land as a root of title is expected to plead and establish in evidence, acts of possession or acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant the inference that he is the exclusive owner. See the following decisions on the point: ***Ekpo Vs Ita (1932)11 NLR 68, Idundun Vs Okumagba (1976) 9-10 SC 227, Piaro vs Tenalo (1976) 12 SC 31, Chiwendu Vs Mbamali (1980) 3-4 SC 32, Okafor Vs Idigo III (1984) 1 SCNLR 48t Fasoro Vs Beyioku (1988) 2 NWLR (Pt 76) 263***.

At the trial, the Claimant led uncontroverted evidence to prove that after he purchased the land, he has been in exclusive, physical and effective possession of the land in dispute and that this land forms part of his premises where he is erecting a building.

As I earlier stated in this judgment, in a case such as this 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.***

In the event, I am of the view that the evidence adduced by the Claimant is sufficient to establish his further proofs by acts of ownership; by 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 by acts of long possession and enjoyment of the land.

The Claimant is also seeking some ancillary reliefs of perpetual injunction, mandatory injunction and damages.

It is settled law that trespass is the slightest interference in the land of another and it is actionable ***per se*** (without proof of damages). See: ***Enilobo vs. Adegbesan (2011) 11 NWLR (Pt.698) 611 at 621.***

Furthermore, a claim for trespass is rooted in the right to exclusive possession of the Claimant. Already, the Claimant has established his right to exclusive possession of the land in dispute. At the trial he led evidence to show that he has been in exclusive, physical and effective possession of the land in dispute.

He also adduced uncontroverted evidence to show that his exclusive possession is been interfered with by the Defendant who has constructed a flood drainage into his land such that the land is always flooded whenever it rains. Furthermore, I agree with the submission of the learned counsel for the Claimant that the Defendant's act of trying to reclaim the land which he sold to the Claimant amounts to interference with the land in dispute.

The Claimant is entitled to the injunctive orders to prevent the Defendant, his agents, servants, privies and assigns from further trespassing unto the land in dispute and to stop the devastating effects of the flood on his land and buildings. In the case of ***Abubakar vs.J.M.D.B (1997) 10 NWLR (Pt. 524) 242 at 252, Edozie J.C.A*** posited thus: ***"Some of the circumstances in which mandatory injunction may be granted are: (1) Where the injury done to the plaintiff cannot be estimated and sufficiently compensated for by damages. (2.) Where the injury to the Plaintiff is so serious and material that the restoration of things to their former condition is the only method whereby justice can be adequately done."***

Again it is settled law that a mandatory injuction can be granted to restrain a completed act. See ***Abubakar vs.J.M.D.B (1997) 10 NWLR***

On damages, the Claimant made a claim for special and general damages in paragraph 20 (e) e (i), (ii) and (iii) making a total sum of N5, 000.000.00 (five million naira) under different subheads.

It is settled law that special damages must be specifically pleaded and strictly proved. However, the nature of proof depends on the circumstances of each case.

See the following cases.

1. Neku w Ltd V A.C.B Ltd (2003) 115 LRCN 2449

2. Osuji V. Isiocha (1989) 6 SC (pt II)1,

3. Eneh V. Ozor & Anor Supra P.78 (paras pz)

At the trial, the Claimant led evidence to prove the damages he suffered arising from the acts of the Defendants and his cohorts such as the sand and granite on the land being washed away by flood which entered his land. Although he made a claim for the cost of restoring the degraded portion of the land, he did not give sufficient particulars of the alleged degradation of the land neither did he lead any evidence to prove the nature and extent of the alleged degradation. Commenting on the quantum of evidence required to prove special damages in the case of ***Amadi vs. Essien (1994) 7 NWLR (Pt. 354) 91 at 127, Akintan JCA***

stated thus: ***"It is true that strict proof of damages means no more than that the evidence must show the same particularity as is necessary for its pleadings. It should consist of evidence of particular losses which are exactly known or accurately measured before the trial".***

Again in the case of ***Oyedeji vs. Adenle (1993) 9 NWLR (Pt.316) 224 at 239, Achike JCA*** (as he then was) stated thus: ***"Not having specifically particularized and proved special damages nor led sufficient evidence to make the assessment of general damages possible or real, if trespass had been established, the appellant would have been entitled only to nominal damages."***

In the event, I am of the view that the claim of the sum of N1, 630, 000.00 (one million, six hundred and thirty thousand naira) being the alleged cost of restoring the degraded portion of the land as an item of special damages was not specifically pleaded nor strictly proved and it is therefore bound to fail.

In respect of the claim for the sum of ₦2,100,000.00 (two million, one 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 depend on the evidence of what the Defendant/Counter-Claimant has suffered from the acts of the Claimant.

In the instant case the Claimant adduced evidence of how the Defendant put him through the stress of battling with the flood entering into his compound, appealing to the elders to settle the dispute and finally embarking on the present law suit to seek redress. He is entitled to some measure of compensation for the harm and injury caused by the Defendant. See: ***Chevron (Nig.) Ltd. vs. Omoregha (2015) 16 NWLR (Pt.1485) 336 at 340.***

On the whole, the sole issue for determination is resolved in favour of the Claimant. ***Judgment is therefore entered in favour of the Claimants as follows:***

a) A declaration that the Claimant is the person entitled to apply and be granted a statutory right of occupancy over that piece or parcel of land measuring 44ft X 41ft X38ft X25ft lying, situate and being along Igene street Oyomon Quarter, Uromi having common boundaries in the front by Igene

street , at the back by the Claimant's land, at the right by the house of the Defendant and at the left by Edion Edebhalo which parcel of land the Claimant purchased from the defendant on the 19th February,1973;

b) Perpetual injunction restraining the Defendant by himself, his agents privies and assigns from further trespassing upon the said land;

c) An order of this Honourable court compelling the Defendant by himself, his agents, servants' privies and assigns to remove the blockage preventing the free flow of flood from the junction of Okhualen road junction along Igene Street to empty into the collecting drainage after the Defendant's house;

d) An order compelling the Defendant by himself, his agents, servants privies and assigns to block the flood channel / drainage constructed upon the Defendant's land;

e) The sum of ₦770, 000.00 (seven hundred and seventy thousand naira) being general and special damages.

The break down are as follows:

	₦ : K
General damage _________	*500.000.00*
Special Damages	
(i)12 tipper loads of sand washed away by flood @ ₦15, 000.00 per one	*180,000.00*
(ii) 2 tipper loads of granite @ ₦45, 000.00 per trip	*90. 000.00*
Total =	*770,000.00*

Costs is assessed at N50, 000.00 (fifty thousand naira) in favour of the Claimants.

P.A.AKHIHIERO
JUDGE
13/05/2020

COUNSEL:

M.A.Agbonhiebuele Esq………………………………..Claimant.

Unrepresented………………………………………Defendant.