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
14TH DAY OF MAY, 2020.

BETWEEN: SUIT NO: HCU/09/2016

MR. PETER OKOSUN OBOH----------CLAIMANT
AND
MR. MOSES ETUSI EDIALE ---------- DEFENDANT
(ALIAS DAGA)

JUDGMENT

The Claimant's claims against the Defendant are as follows:

1. A declaration of this Honourable Court that the claimant is the proper person entitled to apply for and be granted statutory right of occupancy in respect of an expanse of land of about 50 native plots, lying, situate and being at Idumu-Ogo Quarters, Obeidu 1 Uromi, a place within the jurisdiction of this Honourable Court;
2. A perpetual injunction restraining the defendant, his agents, servants, privies and/or workmen from further acts of trespass on the said expanse of land;
3. The sum of N500, 000.00 (five hundred thousand naira) as general damages against the defendant in favour of the claimant for acts of trespass on the land by the defendant.

The Claimant in proof of his case testified. In his evidence, the Claimant stated that he is the owner of a piece/parcel of land measuring 50 native plots, lying, situate and being at Idumu-Ogo Quarters, Obeidu 1 Uromi, a place within the jurisdiction of this Honourable Court. That he inherited the land and other properties from his late father, Mr. Okosun Oboh who died on the 20th of November, 1999, after performing the mandatory burial ceremonies as the first son, in accordance with Esan native law and custom applicable in Obeidu, Uromi.

He stated that the said 50 plots of land formed part of the vast land deforested many years ago by his great grandfather, Pa. Eigbidiasun Okosodo. He said that in his lifetime, his great grandfather embarked on shifting cultivation on the said land without any interference from any person.

That upon the demise of Pa. Eigbidiasun Okosodo, his grandfather Mr. Oboh inherited the land and continued to farm on it. That his grandfather married two wives and he gave the 50 native plots as a gift inter vivos to the Claimant's father Mr. Okosun Oboh who was the only son of his grandfather's second wife.

That the Claimant's father and his sons (including the Claimant) farmed on the land continuously and planted more economic trees on the land before the demise of the Claimant's father.

That sometime in 1991, the Claimant's father instituted a suit at the Uromi Customary Court in Suit No. UUDCC/337/91 against one Mr. Oboh Ekata for declaration of title in respect of the said land and the court gave judgment in favour of the Claimant's father. That while that suit was pending, the Defendant and his father were alive and did not do anything.

That after the aforesaid suit was determined, one Mr. Ewaleifoh Ogedegbe also disputed the land with the Claimant's father in Suit No. UUDCC/338/91 and the court also gave judgment in favour of the Claimant's father.

That one Mr. Ogugo Iyoha also instituted a suit against the Claimant's father in respect of the same land in Suit No. UACC/MISC/84/94 and the matter was struck out with ₦ 20 (twenty naira) costs in favour of the Claimant's father.

That sometime in 1990, Claimant's father commissioned a land surveyor to survey the said land and a survey plan was drawn.

That when the Claimant's father died in 1999, the Claimant inherited the 50 native plots of land and continued to farm on it. That sometime in 2012, the Defendant trespassed on the said land and the Claimant warned him to desist from the trespass. The Defendant pleaded with the Claimant to allow him to farm on part of the land and the Claimant allowed him to farm there for only that year.

That sometime in 2016 the Claimant met some people carrying on some construction work on the land and upon challenging them, they informed him that it was the Defendant that sold some of the plots of land to them. The Claimant

maintained that the Defendant has no link with the 50 plots of land hence he instituted this suit against him.

After the Claimant testified on oath and on the 17th day of October, 2018 and the Claimant was cross examined.

The Claimant called one Regina Okosun who testified as C.W.1. Her evidence is similar to that of the Claimant.

The Defendant neither filed any Memorandum of Appearance nor Statement of Defence.

Eventually, the Court foreclosed the Defendant on 12th day of December 2019 after several adjournments and adjourned the matter for final address.

Only the learned counsel for the Claimant filed his Written Address. In his rather terse Written Address, the learned counsel for the Claimant, ***P.O.Okharedia Esq.*** formulated two issues for determination as follows:

1. "***Whether on the evidence and circumstance of this case, the claimant have discharged the burden of proof cast upon him by law in civil cases to entitle him the relief sort no the expanse of land of about 50 native plots, lying, situate and being at Idumu-ogo quarters obeidu 1 Uromi a place within the jurisdiction of this honorable court;***
2. ***Whether the evidence of the Claimant and his witnesses were controverted?"***

ISSUE 1:

Arguing Issue 1, learned counsel submitted that the Clamant has discharged the burden of proof placed on him by the law on the preponderance of evidence as in all civil cases.

He submitted that it is now settled law that there are five ways of establishing title to land as set out in the case of ***Idundun vs. Okumagba (1997) NMLR 200 at 210*** (sic).

He submitted that the Claimant has substantially asserted the affirmation of his title to the 50 native plots, lying, situate and being at Idumu- Ogo Quarters, obeidu 1 Uromi.

ISSUE TWO:

On Issue 2, counsel summited that the defendant never filed his Memorandum of Appearance and his Statement of Defence.

He also submitted that the lawyer who cross examined the Claimant never filed a Memorandum of Appearance for the Defendant.

He submitted that the evidence of the Claimant and his only witness were never contradicted nor controverted in any way. He referred the Court to the case of ***Amayo V. Erinmwingbovo (2006) 29 WRN 185 S.C.***

In respect of uncontroverted or unchallenged evidence counsel referred the Court to the case of ***Arabambi v. A. B. Ind. Lte. (2006) 8 WRN 1 S.C.*** and submitted that it is trite law that when the Claimant's evidence is unchallenged nor controverted, courts are enjoined to accept the evidence and act on it as correct.

He therefore urged the Court to enter judgment for the Claimant as per his Writ of Summons and Statement of Claim.

After the learned counsel for the Claimant addressed this Court, the matter was adjourned for judgment. However soon thereafter, 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 the following decisions on the point: ***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.***

As I earlier observed, the Written Address of the Claimant's counsel is rather too terse. As a matter of fact, the address was not useful at all, he left all the legal research to the Court.

In the case of ***BOSMA & ORS v. AKINOLE & ORS (2013) LPELR-20285(CA)*** the Court of Appeal exposited on the importance of counsel's address as follows:

"Yes the importance of addresses from counsel cannot be over-emphasized as "a good address may provide a Judge a clear mental opinion to perceive either the tenuousness in what had appeared impregnable or to see through the veneer and discover the hard core of a party's case"

It is the duty of counsel to convincingly argue the case of his client and assist the court with relevant authorities.

Also in the case of ***AFRICAN REINSURANCE CORPORATION v. JDP CONSTRUCTION (NIG) LTD (2003) LPELR-215(SC), UWAIS, J.S.C observed thus:***

"Counsel is obliged to argue his client's case convincingly and assist the Court with authorities so that it may arrive at the right decision. Furthermore, Counsel should not surprise his opponent by not citing authorities in support of his case but relying on the Court to do his duty of researching for authorities in support of his client's case. This is never done and should not be encouraged. It shows laziness and arrogance on the part of Counsel."

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 did not inform the Court of the particular methods they have adopted to prove the Claimant's title to the land. However from the tenor of his evidence he appears to be relying on the first, third and fifth means of proof. To wit: proof by traditional evidence; by acts of ownership; and by acts of long possession and enjoyment of the land.

The Claimant traced the traditional history of the land to a period many years ago when his great grandfather, Pa. Eigbidiasun Okosodo allegedly deforested the land. That in his lifetime, his great grandfather embarked on shifting cultivation on the said land without any interference from any person and upon the demise of Pa. Eigbidiasun Okosodo, his grandfather Mr. Oboh inherited the land and continued to farm on it. That his grandfather married two wives and he gave the 50 native plots as a gift inter vivos to the Claimant's father Mr. Okosun Oboh who was the only son of his grandfather's second wife.

That upon the death of his father sometime in 1999, the Claimant allegedly inherited the land in dispute after performing the final burial rites of his deceased father in accordance with Esan Native Law and Custom of Obeidu, Uromi in his capacity as the eldest surviving male child.

The Claimant's evidence of traditional history of the land was neither challenged nor debunked by the Defendant. 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***.

I hold that the Claimant has established his title to the land by acceptable evidence of traditional history.

On proof by acts of ownership and long possession and enjoyment of the land, the Claimant led unchallenged evidence that in his lifetime, his great grandfather embarked on shifting cultivation on the said land without any interference from any person and upon his demise, his grandfather Mr. Oboh inherited the land and continued to farm on it. That thereafter, the Claimant's father and his sons (including the Claimant) farmed on the land continuously and planted more economic trees on the land before the demise of the Claimant's father.

He also led evidence that sometime in 1991, his father instituted a suit at the Uromi Customary Court in Suit No. UUDCC/337/91 against one Mr. Oboh Ekata for declaration of title in respect of the said land and the court gave judgment in favour of the Claimant's father.

That after the aforesaid suit was determined, one Mr. Ewaleifoh Ogedegbe also disputed the land with the Claimant's father in Suit No. UUDCC/338/91 and the court also gave judgment in favour of the Claimant's father.

That one Mr. Ogugo Iyoha also instituted a suit against the Claimant's father in respect of the same land in Suit No. UACC/MISC/84/94 and the matter was struck out with ₦20 (twenty naira) costs in favour of the Claimant's father.

That sometime in 1990, Claimant's father commissioned a land surveyor to survey the said land and a survey plan was drawn.

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.***

The unchallenged evidence before this Court that the Claimants and his predecessors in title have been exercising exclusive possession is further proof of his ownership of the land in dispute.

In proof of the acts of trespass, the Claimant adduced evidence that sometime in 2012, the Defendant trespassed on the said land and the Claimant warned him to desist from the trespass. That the Defendant pleaded with the Claimant to allow him to farm on part of the land and the Claimant allowed him to farm there for only that year.

He further adduced evidence that sometime in 2016 he met some people carrying on some construction work on the land and upon challenging them, they informed him that it was the Defendant that sold some of the plots of land to them hence he instituted this suit against him.

On the claim for N500,000.00 (five hundred thousand naira) as general damages for trespass on the Claimant's lands, 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 Claimant has suffered from the acts of the Defendant.

In the instant case, going through the entire gamut of the Claimant's case, there is no evidence of anything he actually suffered from the acts 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 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; ***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.***

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

1. A declaration of this Honourable Court that the claimant is the proper person entitled to apply for and be granted statutory right of occupancy in respect of an expanse of land of about 50 native plots, lying, situate and being at Idumu-Ogo Quarters, Obeidu 1 Uromi, a place within the jurisdiction of this Honourable Court;

2. A perpetual injunction restraining the defendant, his agents, servants, privies and/or workmen from further acts of trespass on the said expanse of land; and

3. The sum of N200, 000.00 (two hundred thousand naira) as general damages against the defendant in favour of the claimant for acts of trespass on the land by the defendant.

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

P.A.AKHIHIERO
JUDGE
14 /05/2020

<u>COUNSEL:</u>
P.O.Okharedia Esq……..Claimant
Unrepresented.....……Defendant