

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO
ON FRIDAY
THE 2ND DAY OF MAY, 2025.

BETWEEN:

SUIT NO. B/1250/2022

MR.SUNDAY ERHABOR -----CLAIMANT

AND

PERSONS UNKNOWN -----DEFENDANTS

JUDGMENT

The Claimant instituted this suit against the Defendants vide a Writ of Summons and Statement of Claim filed on the 20th of December, 2022 wherein he claimed as follows:

- 1) A DECLARATION that the Claimant is the holder of a statutory Right of Occupancy and entitled to the legal title, interest and ownership including user rights over all that land covered by a Certificate of Occupancy No: EDL 6443 registered as No. 136, at page 1 in Volume 53 in Volume 53 in the Certificate of Occupancy Digital Register in the EDOGIS Registry office of Edo State at Benin City and in respect of all that parcel of land***

measuring 6.786 hectares lying being and situate at Azagba Village, Benin-Abraka Road Ikpoba-Okha Local Government, Edo State and more particularly shewn and delineated in survey plan No. GEO:3356:2015: ENG-EDO dated 04/02/2015 to the exclusion of all other persons including the Defendants and/or those claiming through them jointly or severally, including their heirs, servants, privies or any other person howsoever called laying claim to any part of the said land in the legal possession of the Claimant;

- 2) The sum of N20,000,000:00 (Twenty Million Naira) jointly and severally for unlawful trespass by the Defendants unto the Claimant's land;*
- 3) AN ORDER granting possession of all that parcel of land covered by a Certificate of Occupancy No: No: EDL 64443 dated 18th January, 2022 and registered as No. 136, at page 1 in Volume 53 in the Certificate of Occupancy Digital Register in the EDOGIS Registry office of Edo State at Benin City and in respect of all that parcel of land measuring 6.786 Hectares lying and situate at Azagba Village, Benin-Abraka Road, Ikpoba-Okha Local Government, Edo State and more particularly shewn and delineated in survey plan No. GEO:3356:2015: ENG-EDO dated 04/02/2015 to the Claimant; and*
- 4) AN ORDER of Perpetual injunction restraining the Defendants by themselves, their agents, privies and/or servants from trespassing or further trespassing into the land of the Claimant now in dispute, destroying Claimant's crops, laying foundation, digging trenches on the land, depositing sand or granite on any part of the land and/or erecting any form of structure on the land or dealing in Claimant's land in any manner whatsoever that is inconsistent with the Claimant's possessory, user and/or legal right to the land now in dispute.*

The Writ of Summons, Statement of Claim and other accompanying processes were served on the Defendants but they did not put up any appearance in this suit neither were they represented by any counsel despite several hearing notices that were served on them. In essence, the suit was undefended.

At the hearing, the Claimant called one witness, CW1, testified in person and tendered some documentary exhibits.

At the hearing, the Claimant testified that he is the owner and in peaceful possession of the land in dispute, measuring 6.786 hectares lying being and situate at Azagba Village, Benin-Abraka Road Ikpoba-Okha Local Government, Edo State.

The Claimant alleged that the land now in dispute originally belonged to his late mother Mrs. Unionwan Erhabor who died intestate on the 31st of October 1998 and was buried on the 15th of November 1998 in accordance with Benin native law and custom after which he inherited the land.

He said that his late mother acquired ownership of the land now in dispute by deforestation in the early 1950s before the establishment of the Plots Allotment Committees by the Oba of Benin and the coming into effect of the land Use Act in 1978.

He alleged that his late mother planted Rubber Tress and other economic crops such as Kolanut on the land and maintained same till she died in the year 1998 without any let or hindrance from anybody including the Defendants.

Claimant alleged that he grew up to meet his late mother farming on the land now in dispute and he assisted to farm on the land without any hindrance or interference from anybody including the Defendants in this suit.

According to him, after the death and burial of his mother, her family met in accordance with Benin Native law and custom to share her property and the land now in dispute was given to him as part of his inheritance. The sharing document of his late mother's property was tendered and admitted in evidence as Exhibit "A".

The Claimant alleged that although he now resides in Austria, he continued to farm on the land through his wife and some of his siblings and occasionally visits the land whenever he is in Nigeria without any let or hindrance from any one including the Defendants.

He alleged that when he came to Nigeria sometime in 2015, he commissioned a Licensed Surveyor to survey the land now in dispute and same was done without any let or hindrance from anybody. The Survey Plan was tendered and admitted in evidence as Exhibit "B".

He alleged that about three years ago, he visited Nigeria and commenced the processing of a Certificate of Occupancy over the land now in dispute as he had plans to retire home soon and establish a multipurpose agricultural venture on the land.

He said that consequent upon his application for a statutory Right of Occupancy over the entire land now in dispute and the fulfillment of all the requirements for the grant of a Statutory Right of Occupancy, the Edo State Government granted him a Certificate of Occupancy No: EDL 6443 registered as No. 136, at page 1 in Volume 53 in the Certificate of Occupancy Digital Register in the EDOGIS Registry office of Edo State at Benin City and in respect of all that parcel of land measuring 6.786 hectares lying being and situate at Azagba Village, Benin-Abraka Road Ikpoba-Okha Local Government, Edo State and more particularly shewn and delineated in survey plan No. GEO: 3356:2015: ENG-EDO dated 04/02/2015.

The said certificate of Occupancy and the survey plan annexed to it were admitted as Exhibit "C" at the hearing.

The Claimant alleged that sometime in June 2022, he visited Nigeria and he went to view the land in dispute and was shocked to discover that the Defendants entered the land and started to erect some buildings on the land without his consent and/or authority.

The Claimant said that he tried to discover the identity of the Defendants but all efforts proved abortive.

The Claimant alleged that the Defendants' acts of trespass on his land have disrupted his plans to establish a multipurpose Agricultural venture on the land and caused him grave damages which cannot be adequately compensated in financial terms. Hence he has instituted this suit against the Defendants.

The Defendants were issued Hearing Notices to cross-examine the Claimant's witness and the Claimant after they testified but none of them turned up.

The matter was fixed for defence and further Hearing Notices were issued and served on the Defendants but no one showed up until they were foreclosed by the order of the Court.

Sequel to the application of the Claimant's counsel, the case was thereafter adjourned for Final Addresses.

In his final written address, the learned counsel for the Claimant, *Monday Agienoji Esq.* formulated a sole issue for determination as follows:

“Whether the Claimant is entitled to all the reliefs being claimed in this suit, even though the Defendants did not put up any defence?”

Arguing the sole issue for determination, the learned counsel submitted that the Claimant is entitled to all the reliefs set out in paragraph 25 (i), (ii), (iii), (iv); and (v) of his deposition.

He said that the Claimant in his testimony traced his root of title to the land in dispute as can be seen in paragraphs 4, 5, 6 and 7 of his deposition. He said that the Claimant also tendered the sharing document, Exhibit “A”, his survey plan, Exhibit “B” and his Certificate of Occupancy which was admitted as Exhibit "C".

He submitted that the Supreme Court has laid down the five methods of proof of ownership of land in the case *Idundun vs. Okumagba (1976) 9-10 S.C. 227*. He also cited the following cases on the point:

(1) ABRAHAM V. OLORUNFEMI (1991) 1 NWLR (Part 165) 53 at 58 Ratio 8

(2) OYADARE V. KEJI (2005) 4 NJSC 172 at 176 Ratio 5

(3) OKONJI V. NJOKAMA (1999) 73 LRCN 3632 at 3643, Ratio 19

He submitted that the Claimant has successfully established his title to the land in dispute by the production of documents of title namely; Exhibits "A", “B” and "C” respectively.

He further submitted that all that is required of the Claimant is to plead and prove just one root of title and no more and he relied on the case of *ANYANWU V.MBARA (1992) 5 NWLR (Part 242) 386*.

Counsel submitted that the Defendants did not defend the suit or contradict the evidence adduced by the Claimants so they are deemed to have admitted all the evidence adduced by the Claimant. He relied on the case of *DAN MAINAGGE V. ISHAKU GWAMMA (2004) 19 NSCQR 254 at 213*.

Furthermore, he posited that in an undisputed suit of this nature, what is required of the Claimant is minimal proof which the Claimant has outstandingly established.

On the Claimant's reliefs against the Defendants for damages for trespass and an order of injunction, he submitted that the Claimant has equally discharged the burden and standard of proof imposed on him. He said that the Claimant adduced evidence to prove the Defendant's various acts of trespass on the land which were not contradicted.

He submitted that once a finding of trespass is made against the Defendants, the claim for damages and injunction must be awarded by the Court and he relied on the cases of ***YAKUBU V PHCN (2012) ALL FWLR (PART 616) 529 at 541-542*** and ***AKANJI SOMORIN & 5 ORS V NURUDEEN ADEKANBI & ORS (2012) ALL FWLR (PART 622) 1798***.

In conclusion, he urged the Court to grant the Claimant's reliefs.

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 Defendants 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 Defendants, 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 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 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 the five ways of proving ownership of land are as follow:

- (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 the case of *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 tenor of his evidence the Claimant appears to be relying on the second means of proof, to wit: proof by the production of documents of title.

On the proof by the production of title documents, the Claimant tendered the family sharing document by which he inherited the land in dispute from his late mother. It was admitted as Exhibit “A”. He tendered his survey plan which was admitted as Exhibit “B” and he also tendered his Certificate of Occupancy over the land which was admitted as Exhibit “C”.

It is settled law that a Certificate of Occupancy is prima facie proof of title to the land over which it was issued. Once a person is granted a Certificate of Occupancy over a parcel of land, he is entitled to hold same to the exclusion of any other person unless and until the said Certificate of Occupancy is set aside or it gives way to a better title. See: *Ilona v Idakwo (2003) LPELR-1496(SC)*; *Madu v Madu (2008) 2-3 S.C. (PT 11) 109, (2006) LPELR-1806(SC)*.

In this case, the Defendants did not adduce any evidence to challenge the validity of the certificate of occupancy which was admitted as Exhibit “C”. In the absence of any challenge to Exhibit “C”, I hold that it will suffice to establish the Claimant’s title to the land in dispute.

I hold that the acts of the Defendants entering upon the land of the Claimant and developing same without his consent amounts to trespass. It is trite law that trespass to land constitutes the slightest disturbance to the possession of land by a person who cannot show a better right to possession. Possession is the foundation of any claim of trespass. See the cases of *JIAZA VS. BAMGBOSE (1999) 7 NWLR (PT. 610) 182*; *FASIKUN II VS. OLURONKE II (1999) 2 NWLR (PT. 589) 1*; *OSHO VS. FOREIGN FIN. CORP. (1991) 4 NWLR (PT. 184) 157*; *ADELAJA VS. FANOIKI (1990) 2 NWLR (PT. 131) 137*; *ANYABUNSI VS. UGWUNZE (1995) 6 NWLR (PT.401) 255*; and *OROK & ORS V. IKPEME & ORS (2017) LPELR-43493(CA) (PP. 10-12 PARAS. A-A)*.

In the instant case, the Claimant has established that he was in exclusive possession of the land in dispute before the Defendants encroached on the land. Thus, the disturbance of the Claimant’s exclusive possession by the Defendants amounts to trespass.

On the relief of a perpetual injunction against the Defendants, it is settled law that once trespass has been proved, an order of injunction becomes necessary to restrain further trespass. See: **ADEGBITE VS. OGUNFAOLU (1990) 4 NWLR (PT. 146) 578; BABATOLA VS. ALADEJANA (2001) FWLR (PT. 61) 1670 and ANYANWU VS. UZOWUAKA (2009) ALL FWLR (PT. 499) PG. 411.**

In the event, I hold that the Claimant is entitled to a perpetual injunction to restrain the Defendants, their agents, privies or servants from any further acts of trespass on the Claimant's land.

Lastly on the order for the award of N20, 000,000.00 (Twenty Million Naira) General damages for trespass, it is settled law that the fundamental objective for the award of damages is to compensate the Claimant for the harm and injury caused by the Defendant.

Thus, it is the duty of the Court to assess the 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.

At the trial, the Claimant testified that sometime in June 2022, he visited Nigeria and discovered that the Defendants had entered his land, destroyed his economic crops and started to erect some buildings on the land without his consent and/or authority.

The Claimant further alleged that the Defendants' acts of trespass on his land have disrupted his plans to establish a multipurpose Agricultural venture on the land and caused him grave damages.

Although the Claimant did not quantify the nature of the damages which he suffered, it is apparent that the acts of trespass has occasioned some loses on the part of the Claimant for him to be entitled to some reasonable compensation to cover his losses. Generally the trial court has discretion as to the quantum of damages it would award in a claim of damages for trespass. See: **U.B.N. v. Odusote Bookstores Ltd. (1995) 9 NWLR (Pt.421) pg. 558; Solanke v. Ajibola (1969) 1 NMLR pg. 45; ACB Ltd v. Apugo (2001) 5 NWLR (pt.707) pg. 653; and YENEYIN & ANOR V. AKINKUGBE & ANOR (2010) LPELR-2875(SC).**

In the instant case, I will exercise my discretion to award a reasonable sum as general damages to compensate the Claimant.

On the whole, I hold that the sole issue for determination is resolved in favour of the Claimant and judgment is entered in favour of the Claimant as follows:

- 1) A DECLARATION that the Claimant is the holder of a statutory Right of Occupancy and entitled to the legal title, interest and ownership including user rights over all that land covered by a Certificate of Occupancy No: EDL 6443 registered as No. 136, at page 1 in Volume 53 in the Certificate of Occupancy Digital Register in the EDOGIS Registry office of Edo State at Benin City and in respect of all that parcel of land measuring 6.786 hectares lying being and situate at Azagba Village, Benin-Abraka Road Ikpoba-Okha Local Government, Edo State and more particularly shewn and delineated in survey plan No. GEO:3356:2015: ENG-EDO dated 04/02/2015 to the exclusion of all other persons including the Defendants and/or those claiming through them jointly or severally, including their heirs, servants, privies or any other person howsoever called laying claim to any part of the said land in the legal possession of the Claimant;*
- 2) The sum of N3,000,000:00 (Three Million Naira) jointly and severally for unlawful trespass by the Defendants unto the Claimant's land;*
- 3) AN ORDER granting possession of all that parcel of land covered by a Certificate of Occupancy No: No: EDL 64443 dated 18th January, 2022 and registered as No. 136, at page 1 in Volume 53 in the Certificate of Occupancy Digital Register in the EDOGIS Registry office of Edo State at Benin City and in respect of all that parcel of land measuring 6.786 Hectares lying and situate at Azagba Village, Benin-Abraka Road, Ikpoba-Okha Local Government, Edo State and more particularly shewn and delineated in survey plan No. GEO:3356:2015: ENG-EDO dated 04/02/2015 to the Claimant; and*
- 4) AN ORDER of Perpetual injunction restraining the Defendants by themselves, their agents, privies and/or servants from trespassing or further trespassing into the land of the Claimant now in dispute, destroying Claimant's crops, laying foundation, digging trenches on the land, depositing sand or granite on any part of the land and/or erecting*

any form of structure on the land or dealing in Claimant's land in any manner whatsoever that is inconsistent with the Claimant's possessory, user and/or legal right to the land now in dispute.

The Defendants shall pay the sum of N200, 000.00 (Two Hundred Thousand Naira) to the Claimant as costs.

P.A.AKHIHIERO
JUDGE
02 /05/2025

COUNSEL:

Monday Agienoji Esq.-----Claimant.

Unrepresented----- Defendants.