

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 WEDNESDAY
THE 14TH DAY OF MAY, 2025.

BETWEEN:

SUIT NO. B/480/2021

MISS. IVBONGHOMWEN AGHIMIEN

(SUING THROUGH HIS LAWFUL ATTORNEY

MISS. VIVIAN AGHIMIEN)

} -----CLAIMANT

AND

MRS. OSAYEMWENRE OTASOWIE IZEVBUWA.....DEFENDANT

JUDGMENT

Initially, the Claimant instituted this suit vide a Writ of Summons and Statement of Claim, filed on the 2nd of June, 2021 against two defendants.

However, before the commencement of the hearing, the second Defendant, one Mr. Aigbe Etinosa opted for out of court settled with the Claimant and his name was struck out of this suit, which necessitated an amendment to the Writ of Summons and the other accompanying processes.

Thus, the extant pleadings of the Claimant in this suit are her Amended Writ of Summons and Amended Statement of Claim filed on the 26th of July, 2022, wherein she is claiming against the Defendant as follows:

- 1) A DECLARATION that the Claimant is the proper person entitled to the grant of a Statutory Right of Occupancy over all that piece or parcel of land measuring 100 feet by 100 feet and/or having an area of 929.640 Square metres situate, lying and being at Evbukhu Village, Ward 37/B, Benin-Sapele Road, Benin-City, Oredo Local Government Area, Edo State and more particularly delineated in Property Survey Plan No.NSK/ED/336/2008 dated the 22/08/2008;*
- 2) A DECLARATION that the sale of the Claimant's property measuring 50 feet by 100 feet carved out of the larger piece or parcel of land measuring 100 feet by 100 feet and/or having an area of 929.640 Square metres situate, lying and being at Evbukhu Village, Ward 37/B, Benin-Sapele Road, Benin-City, Oredo Local Government Area, Edo State and more particularly delineated in Property Survey Plan No.NSK/ED/336/2008 dated the 22/08/2008 to the Defendant is invalid, fraudulent, wrongfully obtained and null and void;*
- 3) AN ORDER setting aside and/or declaring as null and void any sale, alienation or Deed whatsoever which purportedly transferred the Claimant's property measuring 50 feet by 100 feet carved out of the larger piece or parcel of land measuring 100 feet by 100 feet and/or having an area of*

929.640 Square metres situate, lying and being at Evbukhu Village, Ward 37/B, Benin-Sapele Road, Benin-City, Oredo Local Government Area, Edo State and more particularly delineated in Property Survey Plan No.NSK/ED/336/2008 dated the 22/08/2008 to the Defendant is invalid, fraudulent, wrongfully obtained/transferred;

- 4) The sum of N100,000,000 (One Hundred Million Naira) only as general damages for trespass in that in February, 2021 the Defendant without the consent and/or authority of the Claimant broke into the Claimant's said parcel of land measuring 50 feet by 100 feet carved out of the larger piece or parcel of land measuring 100 feet by 100 feet; and*
- 5) PERPETUAL INJUNCTION restraining the Defendant by herself, her servants, agents, privies from entering onto the Claimant's parcel of land measuring 50 feet by 100 feet carved out of the larger piece or parcel of land measuring 100 feet by 100 feet and/or having an area of 929.640 Square metres situate, lying and being at Evbukhu Village, Ward 37/B, Benin-Sapele Road, Benin-City, Oredo Local Government Area, Edo State for any purpose whatsoever or doing anything at all thereat inconsistent or competing with the Claimant's right and interest thereto.*

The Writ of Summons, Statement of Claim and other accompanying processes were served on the Defendant but she failed to file any process in response although she was represented by a counsel on some few occasions.

At the hearing, the Claimant's Lawful Attorney and her younger brother testified on behalf of the Claimant in proof of her case.

In a nutshell, the Claimant's case is that she is the owner of a parcel of land measuring 100feet by 100 feet lying and situate at Evbukhu Village, Ward 37/B, Benin-Sapele Road, Oredo Local Government Area, Benin City, Edo State.

The Claimant allegedly acquired the aforesaid parcel of land from one Mr. Friday A. Igbinidu sometime in the year 2008; vide a Deed of Transfer which was executed by both parties and their respective witnesses. At the hearing, the Deed of Transfer was admitted in evidence as Exhibit "B".

From the evidence adduced at the trial, the Claimant's predecessor-in-title allegedly acquired an original parcel of land measuring 100 feet by 200 feet vide an approved Application For Building Plot dated 25th April, 2007. The said approval was admitted as Exhibit "C" at the hearing.

The Claimant alleged that after she acquired the land, she employed the services of one Surveyor Kenneth S. Onosohwo, a Registered Surveyor who surveyed the land and produced a Survey Plan No. NSK/ED/336/2008 which was admitted in evidence as Exhibit "D".

Subsequently, the Claimant allegedly erected a building of four flats of three bedrooms each up to roofing level and has been in peaceable possession of the entire parcel of land without any disturbance and/or interference from anybody until the alleged trespass by the Defendants.

According to the Claimant, sometime in February, 2021 the Defendant and the former 2nd Defendant entered onto her land and started building on it.

The Claimant alleged that she confronted the Defendants and warned them to put a stop to all their acts of trespass on her land as same belongs to her, but they ignored her warning.

The Claimant thereafter instructed her solicitors to write a petition to the police against the alleged trespassers. At the hearing, the petition was admitted as Exhibit “I”.

Subsequently, the Claimant instituted this suit against the alleged trespassers.

Upon the conclusion of the evidence of the Claimant’s Lawful Attorney and her witness, the matter was adjourned for cross examination and the Court ordered that fresh hearing notice should be issued and served on the Defendant. The Hearing notice was served on her but neither the Defendant nor her lawyer came to Court to cross examine the witnesses.

Eventually, the Court foreclosed the Defendant from cross examining the witnesses and the matter was adjourned for Defence. The Defendant never showed up in Court to defend the suit so the matter was adjourned for final address.

In his final address, the learned counsel for the Claimant, *P.E. Owachu Esq.* formulated three issues for determination as follows:

- 1) Whether or not the claimant has proof his case beyond reasonable doubt on balance of probabilities having regard to the totality of evidence before this honorable court to entitle her to the reliefs sought;*
- 2) Whether or not the defendant is liable to the claimant for trespass on the claimant’s land measuring 50feet by 100feet carved out of the larger piece or parcel of land measuring 100feet by 100feet and/or having an area of 929.640 Square metres situate, lying and being at Evbukhu Village, Ward 37/B, Benin-Sapele Road, Benin-City, Oredo Local Government Area, Edo State and more particularly delineated in Property Survey Plan No.NSK/ED/336/2008 dated the 22/08/2008; and*

3) If issues 1 and 2 are answered in the affirmative, whether or not the claimant is entitled to the reliefs sought.

Thereafter, the learned counsel argued the three issues seriatim.

ISSUE NO. 1:

Whether or not the claimant has proof his case beyond reasonable doubt on balance of probabilities having regard to the totality of evidence before this honorable court to entitle her to the reliefs sought.

Arguing this first issue, learned counsel submitted that it is trite law that in land matters as in other civil matters, the standard of proof is on the balance of probabilities and it is the duty of the Claimant in an action to adduce evidence which ought to reasonably satisfy the Court that the fact sought to be proved is established.

He maintained that in a civil suit, the burden of proof is on the preponderance of evidence and he relied on the following cases:

BAMALI V. TOGUN (2023) 14 NWLR (PT. 1905) PAGE 411 @ PAGE 425-426; KAIYAOJA V. EGUNLA (1974) 12 SC Page 55 at Page 61; and BOYEIND.LTD.V.SOWEMIMO [2009]10NWLR PART 1148 PAGE.136 @ P.164, PARA A.

He submitted that upon a prima facie case being established by the Claimant in a land matter, the balance of probabilities will be in his favour unless the Defendant tilts the balance and he relied upon the case of ***NGENE V. IGBO (1991) 7 NWLR (Part 203) Page 358 at Pages 368–369.***

Learned counsel identified the five ways of proving title to land as enumerated in the decision of the Supreme Court in the case of ***Idundun v. Okumagba (1976) NMLR 200 at 210.***

Learned counsel referred to paragraphs 1-44 of the Amended Statement of Claim and the evidence adduced at the trial to show how the Claimant acquired the land in dispute and urged the Court to hold that the Claimant is the owner of the land in dispute.

He submitted that the Claimant established the identity of the land by tendering a Survey Plan Exhibit “D” showing the dimension of the land accurately and he relied on the case of ***OGUNDALU V. MACJOB (2015) 8 NWLR (Part 1460) Page 96 at Pages 114– 115.***

Furthermore, he submitted that the tendering of Deed of Transfer and Survey Plan of the land showing beacon numbers is sufficient evidence of acts of possession. He said that apart from obvious physical acts of possession of the Claimant since, 2008, the demarcation of land with survey beacons or even pegs is enough acts of possession and he relied on the cases of ***MAJEKODUNMI V. ABINA (2002) 3 NWLR (Part 755) Page 720 at Page 747;*** and ***AJERO V. UGORJI (1999) 10 NWLR (Part 621) Page 1 at Page 14.***

Counsel posited that in proof of her title, the Claimant also relied on her title documents. He submitted that the documents of title are documentary evidence which cannot be contradicted, altered, added to or varied by oral evidence of any particular witness and he cited ***Section 128 of The Evidence Act, 2011.***

He pointed out that the Defendant did not deny or controvert any of the evidence adduced by the Claimant. He submitted that averments that are not controverted are

deemed to have been admitted as in this instance case and he relied on the following cases: *USENI V. ATTA* [2023] 8 NWLR PART 1887 PAGE 519 @ 555 PARA.G; *EZENWA V. K.S.H.S.M.B.* (2011) 9 NWLR (Part 1251) Page 89 at Page 132; and *ONAGORUWA V. J.A.M.B.* [2001] 10 NWLR PART 722 PAGE 742 @ PAGE 753 PARA.C.

ISSUE NO. 2

Whether or not the defendant is liable to the Claimant for trespass on the Claimant's land measuring 50 feet by 100 feet carved out of the larger piece or parcel of land measuring 100 feet by 100 feet and/or having an area of 929.640 Square metres situate, lying and being at Evbukhu Village, Ward 37/B, Benin-Sapele Road, Benin-City, Oredo Local Government Area, Edo State and more particularly delineated in Property Survey Plan No.NSK/ED/336/2008 dated the 22/08/2008.

Counsel submitted that trespass to land is an entry upon land or any direct and immediate interference with the possession of land and he relied on the case of *AJERO V. UGORJI* (1999) 10 NWLR (Part 621) Page 1 at Page 17 PARA.C-D.

He said that in the instant case, the Claimant has established that she has been in exclusive possession of the land in dispute since 2008 until when the Defendant trespassed unto the land by depositing trips of sand and molding some blocks on the land.

He therefore urged the Court to hold that the Defendant is liable for trespass and to resolve this issue in favour of the Claimant.

ISSUE NO. 3

If issues 1 and 2 are answered in the affirmative, whether or not the claimant is entitled to the reliefs sought.

Learned counsel submitted that based on the preponderance of evidence adduced by the Claimant in this case and he urged the Court to so hold.

He submitted that in awarding general damages, this Honourable Court has discretion to make its own assessment of damages due to the Claimant based on the evidence adduced by the Claimant and he relied on the case of ***AMINU V. OGUNYEBI (2004) 10 NWLR (Part 882) Page 457 at Page 484.***

In conclusion, he urged the Court to grant the Claimant all the reliefs claimed in this suit.

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 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 her evidence the Claimant appears to be relying on the second, third and fifth means of proof, to wit: proof by the production of documents of title, by acts of ownership and by acts of long possession of the land.

On the proof by the production of title documents, the Claimant tendered her Deed of Transfer which was admitted as Exhibit “B” at the trial while her Survey Plan was admitted as Exhibit “D”.

However, the Claimant’s main document of title is the Deed of Transfer (Exhibit “B”). It is evident that Exhibit “B” is not a registered legal instrument so it cannot convey legal title to the land.

However, it is settled law that a purchaser of land who has paid and taken possession of the land by virtue of a registrable instrument which has not been registered acquires an equitable interest which can only be defeated by a purchaser for value without notice of the prior equity. See the following cases: *Agboola vs. U.B.A. Plc. (2011) 11NWLR (Pt.1258) 375 at 415; Dauda vs. Bamidele (2000) 9 NWLR*

(Pt.671) 199 at 211; and Goldmark (Nig.) Ltd. vs. Ibafor Co. Ltd. (2012) 10 NWLR (Pt.1308) 291 at 349-350.g

In the recent case of: *Atanda vs. Commissioner for Lands and Housing, Kwara State & Anor. (2018) 1 NWLR (Pt.1599) 32 at 55, Sanusi JSC*, delivering the lead judgment of the Supreme Court restated the position thus:

“A registrable instrument which has not been registered is also admissible only to establish or prove equitable interest or to prove payment of purchase price.”

Flowing from the foregoing, I am of the view that although Exhibit “B”, *per se* cannot establish legal title to the land in dispute, it will suffice to vest an equitable interest on the Claimant, which can only be defeated by a purchaser for value without notice of the prior equity. In the absence of any challenge to Exhibit “B”, I hold that it will suffice to establish the Claimant’s title to the land in dispute.

On acts of ownership and possession, the Claimant led unchallenged evidence to prove that after the purchase of the land, she surveyed the land and she tendered a survey plan which was admitted in evidence as Exhibit “D”.

Subsequently, the Claimant allegedly erected a building of four flats of three bedrooms each up to roofing level and has been in peaceable possession of the entire parcel of land without any disturbance and/or interference from anybody until the alleged trespass by the Defendants.

At the hearing, all these facts were not challenged or controverted by the Defendant so he is deemed to have admitted them.

From the uncontroverted evidence of the Claimant, this evidence of carrying out some developments on the land amount to acts of possession which is one of the ways of proving title to land. This is further proof of the Claimant’s title. See:

Section 35 of the Evidence Act, 2011 and the case of: Alikor vs. Ogwo (2010) 5 NWLR (Pt.1187) 281 at 312.

On the relief of a perpetual injunction against the Defendant, 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 Defendant, his Agents, privies or servants from any further acts of trespass on the Claimant's land.

On the claim for the sum of N100,000, 000:00 (One Hundred Million 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 Claimant has suffered from the acts of the Defendant.

In the instant case, the Claimant led evidence of how the Defendant was found moulding blocks on part of the Claimant's land and thereafter carried out some developmental activities on the land.

However, the Claimant did not elaborate on the impact of the Defendant's trespass on her land or the extent of any losses occasioned by the Defendant's trespass.

Generally the trial court has discretion as to the quantum of damages it would award in a claim of damages for trespass. The assessment does not depend on any legal rules- but the discretion of court is however limited by usual caution or prudence and remoteness of damage when considering its award of damages. 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)*.

However, since trespass is actionable per se, where there is no proof of the losses incurred by the Claimant as a result of the Defendant's acts of trespass, the Claimant is entitled to be compensated by way of nominal damages.

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 that the Claimant is the proper person entitled to the grant of a Statutory Right of Occupancy over all that piece or parcel of land measuring 100 feet by 100 feet and/or having an area of 929.640 Square metres situate, lying and being at Evbukhu Village, Ward 37/B, Benin-Sapele Road, Benin-City, Oredo Local Government Area, Edo State and***

more particularly delineated in Property Survey Plan No.NSK/ED/336/2008 dated the 22/08/2008;

- 2) A DECLARATION that the sale of the Claimant's property measuring 50 feet by 100 feet carved out of the larger piece or parcel of land measuring 100 feet by 100 feet and/or having an area of 929.640 Square metres situate, lying and being at Evbukhu Village, Ward 37/B, Benin-Sapele Road, Benin-City, Oredo Local Government Area, Edo State and more particularly delineated in Property Survey Plan No.NSK/ED/336/2008 dated the 22/08/2008 to the Defendant is invalid, fraudulent, wrongfully obtained and null and void;*
- 3) AN ORDER setting aside and/or declaring as null and void any sale, alienation or Deed whatsoever which purportedly transferred the Claimant's property measuring 50 feet by 100 feet carved out of the larger piece or parcel of land measuring 100 feet by 100 feet and/or having an area of 929.640 Square metres situate, lying and being at Evbukhu Village, Ward 37/B, Benin-Sapele Road, Benin-City, Oredo Local Government Area, Edo State and more particularly delineated in Property Survey Plan No.NSK/ED/336/2008 dated the 22/08/2008 to the Defendant is invalid, fraudulent, wrongfully obtained/transferred;*
- 4) The sum of N3,000,000 (Three Million Naira) only as general damages for trespass; and*
- 5) PERPETUAL INJUNCTION restraining the Defendant by herself, her servants, agents, privies from entering onto the Claimant's parcel of land measuring 50 feet by 100 feet carved out of the larger piece or parcel of land measuring 100 feet by 100 feet and/or having an area of 929.640 Square metres situate, lying and being at Evbukhu Village, Ward 37/B, Benin-*

Sapele Road, Benin-City, Oredo Local Government Area, Edo State for any purpose whatsoever or doing anything at all thereat inconsistent or competing with the Claimant's right and interest thereto.

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

P.A.AKHIHIERO

JUDGE

14 /05/2025

COUNSEL:

P.E. Owachu Esq. -----Claimant.

P.E. Uwadiae Esq-----Defendant.