

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 MONDAY
THE 8TH DAY OF DECEMBER, 2025.

BETWEEN:

SUIT NO. B/181/2022

PETER AIGBE

(SUING THROUGH HIS LAWFUL ATTORNEY,

HON. JOSEPH AIGBE).....CLAIMANT

AND

PERSON UNKNOWN..... DEFENDANT

JUDGMENT

The Claimant instituted this suit against the Defendant vide a Writ of Summons and Statement of Claim filed on the 25th of February 2022 wherein he claimed as follows:

- 1. A declaration that the Claimant is the owner of that piece of land measuring 1712.726 square meters covered by survey plan dated the 19th of April, 2017 and the Oghobaye, Community approval dated the 12th September, 2016 and he is entitled to the Certificate of Occupancy of the land.***

- 2. A declaration that the Defendant release and vacate from (sic) the land given to the Claimant to build his personal house, the Claimant being the person who owns the land.*
- 3. The sum of N10,000,000.00 (Ten Million Naira) only damages against the Defendant.*
- 4. An order of perpetual injunction restraining the Defendant from further trespass to the land meant for the building of the Claimant personal house at Oghobaye Community, Ologbo Dukedom, Edo State.*

The Writ of Summons, Statement of Claim and other accompanying processes were served on the Defendant by substituted means, but he did not put up any appearance in this suit nor was he represented by any counsel despite several hearing notices that were served on him. In essence, the suit was undefended.

At the hearing, the Claimant's lawful attorney, Hon. Joseph Aigbe testified that he is the younger brother and lawful attorney to the Claimant who is based and resident in the United States of America. The Claimant's lawful attorney stated that he has the authority of the Claimant to represent him in this suit. The Power of Attorney given to him by the Claimant was tendered in evidence and admitted as **Exhibit "A"**.

The Claimant's lawful attorney stated that himself and the Claimant are both natives of Oghobaye Community, along Sapele-Benin Road, Ologbo, Edo State, a place within the jurisdiction of this Court. He said that the Defendant is an unknown person erecting structures on the land lawfully allotted to the Claimant by the elders and leaders of Oghobaye Community in Ologbo in Edo State.

The Claimant's lawful attorney stated that the land on which the Defendant is erecting structures was given to the Claimant by the elders of Oghobaye Community for the Claimant to build his personal house, and that Oghobaye Community is a Benin Community and operates Benin Customary Land Tenure System.

The Claimant's lawful attorney testified that Oghobaye Community has vast communal lands which are vested on the people for their use for farming and building for residence from time immemorial in accordance with the customs of the Benin

people. He said that the Oghobaye Community has an Odionwere and Council of Elders who pilot the affairs of the Community in accordance with the Benin Customs.

Claimant's lawful attorney further testified that as a native of Oghobaye Community, the Claimant has the legal right and interest over the land allotted to him by the elders of the community as a stakeholder. He also testified that some years ago, the elders acquired the Claimant's inherited family land, directly behind the Claimant's father's house at Oghobaye Community for community use. According to him, these community elders and leaders, gave the Claimant a parcel of land measuring 100 feet by 200 feet as compensation for his inherited land acquired compulsorily by the community.

The Claimant's lawful attorney testified that the Claimant surveyed the land vide survey plan dated the 19th of April 2017. He said that the Claimant has been in undisturbed possession on the land within the community which was acquired through the Benin Land Tenure System via a community approval. The community approval was tendered in evidence and admitted as **Exhibit "B"** while the Survey Plan was admitted as **Exhibit "C"** at the hearing.

The Claimant's lawful attorney testified that when the unknown Defendant started to trespass into his land, he made representations to the Odionwere and Elders of Oghobaye Community about the actions of the Defendant but all efforts to uncover the identity of the Defendant and to stop his further encroachment and trespass on the land by the elders of Oghobaye Community and the Claimant proved abortive.

The Claimant's lawful attorney asserted that the Claimant has suffered loss, damage, ridicule and humiliation by the actions of the Defendant.

Upon the conclusion of the evidence in chief of the Claimant's lawful attorney, the suit was adjourned for cross examination while fresh hearing notice was issued to the Defendant. However, the Defendant failed to appear in court to cross-examine the Claimant's lawful attorney, so the Court foreclosed the Defendant from cross-examining the Claimant's lawful attorney.

Thereafter, the Claimant closed his case, and the suit was adjourned for defence or final address. On the next adjourned date, the Claimant's counsel adopted her written address as her final argument.

In her final written address, the learned counsel for the Claimant, *Mrs. J.F. Ndukwu* formulated three issues for determination as follows:

- 1. Whether in consideration of the facts and totality of evidence before this Honourable court, the Claimant has proved his case as to warrant the court to give him judgement as per his claim.*
- 2. Whether in consideration of the evidence before the court, the Claimant has discharged the burden of proof to sustain his claim.*
- 3. Whether this Honourable court ought to act on the unchallenged evidence of the Claimant.*

Arguing the first issue for determination, the learned counsel submitted that one of the ways to prove title to land is by the production of title documents duly authenticated and executed. In support of this, she cited the case of *Salami v. Lawal (2008) 14 NWLR (pt.1108) 546*.

Learned counsel stated that the Claimant through his Lawful Attorney tendered credible and authentic title documents before this court, and the title documents were unchallenged. She submitted that it is trite law that a party who seeks declaration of title to land, is under an obligation to present all the cogent and credible documentary evidence upon which the claim is founded.

Learned counsel posited that the Claimant tendered three credible documents to wit: the Power of Attorney, the Survey Plan, and the Community land Approval Letter.

Learned counsel submitted that the Claimant has established how he inherited the land in dispute, measuring 100 feet by 200 feet, and how he surveyed it on the 19th day of April 2017. He cited the cases of *Ashiru v. Olukoya (2006) 11 NWLR (Pt.990)1*, and *Lawal v. Akande (2009)2 NWLR(Pt.1126) 425* to buttress his point.

She urged the Court to resolve issue one in favour of the Claimant.

Arguing the second issue, the learned counsel submitted that the general rule is that the burden of proof rests on the party who substantially asserts the affirmative of the issue. She stated that subject to the scale of evidence preponderating, the burden of proof rests squarely on the party who would fail if no evidence at all or no more

evidence, as the case maybe, was given on either side. According to her, the burden rests on the party who asserts the affirmative issue. In support of this, learned counsel cited the case of **AKANDE V. ADISA (2012) 15 NWLR (pt 13245) p.538 (SC)**.

Learned counsel submitted that in the instant case, the burden lies on the Claimant to prove his case. She said that the Claimant has rightly proved his case by tendering all the necessary authentic documents and exhibits before this Court.

Learned counsel submitted that it is trite law that in civil cases, the Claimant must rely on the strength of his case and not on the weakness of the Defendant's case. He cited the case of **AYORINDE V. SOGUNRO (2012) 11 NWLR (pt.11312) p.60 (SC)**.

Learned counsel stated that all the law requires from the Claimant is to discharge the burden placed on him by law. For this, learned counsel cited the case of **AKANDE V. ADISA (supra)**.

Learned counsel submitted that in civil cases, the burden shifts to the Defendant once the Claimant has discharged his burden and he cited the case of **INTERCONTINENTAL BANK LTD V. BRIFANA LTD (2013) 3 NWLR (pt. 1316) p.1**. She maintained that the Claimant having given evidence, which was unchallenged, has duly discharged the burden placed on him by law and is entitled to judgment as per his claims.

She therefore urged the Court to resolve issue two in favour of the Claimant.

Arguing issue three, learned counsel submitted that it is a settled principle of law that any facts not controverted, denied or challenged are deemed admitted. She stated that this is more so, when the Defendant had all the ample time to challenge the Claimant's evidence but failed to do so.

She reiterated that the Defendant did not lead any evidence to challenge the Claimant's case, neither did he cross-examine the Claimant's witness, even though he was given every opportunity to do so by the service on him of numerous hearing notices by this Court. She cited the case of **EBEINWE V. STATE, (2011) 7 NWRL (pt.1246) 402 at 416** to buttress her point.

Learned counsel further submitted that the law is certain that where evidence before a trial court is unchallenged, it is the duty of that court to accept and act on it as it constitutes sufficient proof of a party's claim. She cited the case of ***MONKOM V. UDILI (2010) 2 NWLR (pt.1179) 419 at 442*** and urged the Court to resolve issue three in favour of the Claimant.

Finally, she urged the Court to grant all the reliefs sought by the Claimant 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 the 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 follows:

- 1) By traditional evidence;***
- 2) By the production of documents of title;***
- 3) By proving acts of ownership;***
- 4) 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***
- 5) 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 these 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 and third means of proof, namely: proof by production of documents of title, and proof by acts of ownership.

On the proof by documents of title, the Claimant tendered two documents which were admitted in evidence, namely, a document titled "Application for Building Plot" dated 12/9/2016 admitted as Exhibit "B" and a Survey Plan with Plan No. GEO: 511:2017: ENG-EDO, made on 19/04/2017, admitted as Exhibit "C".

It is clear that Exhibits B and C are not registered legal instruments so they cannot convey legal title to the land. Also, it is trite law that an application for a building plot is not a valid means of proving title to land in Nigeria. See the case of *Oyenehin v. Akinkugbe* (2010) 4 NWLR (Pt. 1184) 265; *Nwosu v. Udeaja* (1990) 1 NWLR (Pt. 125) 188; *Fasoro v. Beyioku* (1988) 2 NWLR (Pt. 76) 263

However, the Claimant also relies on Exhibit C as a means of proving acts of ownership to the land in dispute. The Claimant's lawful attorney testified that the land in dispute was acquired from the Claimant's community after the Claimant's community had compulsorily acquired the Claimant's inherited family land which was directly behind Claimant's father's house in the Claimant's community known as Oghobaye Community. The Claimant's lawful attorney testified that after the Claimant had acquired the land, the Claimant took steps to survey the property. The survey plan was tendered in evidence as Exhibit "C". This survey plan tendered in evidence as proof of ownership was not challenged by the Defendant.

The Claimant's main document of title is the Approval for Building Plot which was admitted as Exhibit "B". However, 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) 11 NWLR (Pt. 1258) 375 at 415; *Dauda vs. Bamidele* (2000) 9 NWLR (Pt. 671) 199 at 211; and *Goldmark (Nig.) Ltd. vs. Ibafon Co. Ltd.* (2012) 10 NWLR (Pt. 1308) 291 at 349-350.

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 immediately after he acquired the land, he surveyed the land vide the Survey Plan which was admitted in evidence as Exhibit “C” and has been in possession of the land until the Defendant trespassed into it.

The uncontroverted evidence of the Claimant’s peaceful and undisturbed possession of the land amounts 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.***

It is an established principle of law that exclusive possession gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrongdoers except the person who can establish a better title. See the case of ***EKRETSU & ANOR V. OYOBEBERE & ORS (1992) LPELR-1099(SC) (PP. 27-28 PARAS. F).***

Furthermore, it is settled law that possession of land can be by sundry means. In the case of ***Thompson v. Arowolo (2003) FWLR (Pt.164) 315 at 371, Onu JSC*** exposted thus: ***"Survey beacons constitute an act of possession which can be relied on to prove title to land."*** See also the case of ***ANOSIKE V. UGOCHUKWU & ORS (2018) LPELR-46096(CA) (PP. 14-16 PARAS. E).***

Again, in the case of ***ONYEULO & ANOR V. IBE & ANOR (2017) LPELR-42622(CA) (PP. 34 PARAS. C)*** the Court of Appeal stated thus: ***"... Even the act of surveying the land with beacon stones alone and registering the same, together with Power of Attorney (Exhibit B) with the lands Registry, Umuahia, as No 95-page 95 Volume 610, was sufficient act of possession"***

See also the cases of ***Ajero Vs Ugorji (1999) 7 SC (pt.2) 58; OFEI Vs Danqua (1961);*** and ***OMAC OILS NIG. LTD & Ors Vs EGBADEYI & Anor (2014) LPELR - 24112 CA.***

From the foregoing, I hold that the Claimant is entitled to the first relief for a declaration that he is the rightful owner of the land in dispute and is entitled to apply and be granted Statutory Right of Occupancy in respect of the land.

On the relief for a declaration that the Defendant should vacate the land in dispute, it is settled law that where there is trespass or encroachment or erection of an illegal structure on a person's land, the proper order to make is for the illegal structure to be removed. See the cases of **DANJUMA V. NASIRU & ANOR (2015) LPELR-25922(CA) (PP. 21 PARAS. C)**; and **HASSAN V. HAKIMI & ORS (2020) LPELR-52792(CA) (PP. 26 PARAS. C)**.

Consequently, the Claimant is also entitled to the declaration that the Defendant should vacate the land.

On the claim for the sum of N10,000,000.00 (Ten Million Naira) only as damages against the Defendant 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.

However, in the instant case, the Claimant did not elaborate on the extent of losses occasioned by the Defendant's acts of trespass. Going through the entire gamut of the Claimant's evidence, there is no evidence of the quantum of damage suffered from the alleged acts of trespass by the Defendant.

Generally, the trial court has discretion as to the quantum of damages it would award in a claim for 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, where the Claimant did not lead sufficient evidence on the extent of injury or losses suffered, he is only entitled to nominal damages which is at the discretion of the Court using the test of a reasonable man. 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.*** Consequently, the Claimant is entitled to nominal damages.

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 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 owner of that piece of land measuring 1712.726 square meters covered by survey plan dated the 19th of April 2017 and the Oghobaye Community approval dated the 12th of September 2016 and he is entitled to the Certificate of Occupancy of the land;***
- 2) A declaration that the Defendant release and vacate the land given to the Claimant to build his personal house, the Claimant being the person who owns the land;***
- 3) The sum of N2,000,000.00 (Two Million Naira) only as damages against the Defendant; and***
- 4) An order of perpetual injunction restraining the Defendant from further trespass to the land meant for the building of the Claimant's personal house at Oghobaye Community, Ologbo Dukedom, Edo State.***

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

P.A. AKHIHIERO
JUDGE
08/12/2025

COUNSEL:

Mrs. J.F. Ndukwu-----Claimant.

Unrepresented----- Defendant.