

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. AKHIHIERO
ON MONDAY
THE 1ST DAY OF DECEMBER, 2025.

BETWEEN:

SUIT NO. B/468/2023

MRS. OSARIYEKEMWEN PETRA IRI -----CLAIMANT

AND

PERSON UNKNOWN----- DEFENDANT

JUDGMENT

The Claimant instituted this suit against the Defendant vide a Writ of Summons and Statement of Claim dated and filed on the 31st of May 2023 wherein she claimed as follows:

- 1. A declaration that the Claimant is the legal and rightful owner of all that piece or parcel of land and the appurtenances therein measuring approximately 100 feet by 100 feet lying and situate at Ward 9, Obayantor I Community, Kilometer 12, Off Benin-Sapele Road, Ikpoba-Okha Local Government Area, Benin City which originally formed part of her large piece of land measuring 200 feet by 200 feet more particularly delineated in Property Survey Plan No. TDN/ED/386/2019 dated 26/07/2019 with Certificate of Occupancy No. 91297-v015b-n5450-u015b-n5759-rw452 registered as No. 102 at Page 1 in***

Volume 8 of the Certificate of Occupancy Digital Register in the EDOGIS Registry Office of Edo State granted by the Governor of Edo State on 14th day of October 2019 within the jurisdiction of this Honourable Court;

- 2. An Order of perpetual injunction restraining the Defendant, either by himself, his agents, servants and/or privies or any other person whatsoever claiming under or through him from further acts of trespass on the said piece or parcel of land measuring approximately 100 feet by 100 feet in any manner whatsoever inconsistent with the claimant's peaceful use and enjoyment of same;***
- 3. N10, 000,000.00 (Ten Million Naira) as general damages for trespass against the Defendant in favour of the Claimant;***
- 4. An order of possession of the said piece or parcel of land in favour of the Claimant; and***
- 5. Cost of Litigation.***

The Writ of Summons, Statement of Claim and other accompanying processes were served on the Defendant but he did not put up any appearance in this suit neither 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 testified that she is the owner of the parcel of land measuring approximately 100 feet by 100 feet lying and situate at Ward 9, Obayantor I Community, Kilometer 12, off Benin-Sapele Road, Ikpoba-Okha Local Government Area, Benin City which originally formed part of her large parcel of land measuring approximately 200 feet by 200 feet.

She alleged that on the 27th day of January 2017 she acquired the said large parcel of land from her predecessor-in-title, Pa. Omoruyi Omorose for the sum of N400,000.00 (Four Hundred Thousand Naira). The Deed of Transfer in respect of the transaction was tendered as a purchase receipt and admitted as Exhibit "A" at the hearing.

Tracing the traditional history of the land, the Claimant alleged that the indigenes of Obayantor I Community in Ward 9 in Ikpoba-Okha Local Government Area, Edo State are the original owners and have been in possession and occupation from time immemorial of all that parcel of land lying and situate at Obayantor I Community, Ikpoba-Okha Local Government Area, Benin City, Edo State.

She said that they have been the owners and in occupation of the entire land as they founded and deforested same from time immemorial.

According to her, when development extended to Obayantor I Community, sometime in 2015 the Odionwere and Elders of Obayantor I Community constituted members of the Elders' Council/the Plot Allotment Committee in charge of allotment of parcels of land to members of Obayantor I Community and members of the public interested in formal acquisition of land in the community.

She said that she applied to members of the Elders' Council/Plot Allotment Committee, Obayantor I Community, Kilometre 12, Benin-Sapele Road, Ikpoba-Okha Local Government Area, Edo State for a large piece or parcel of land measuring approximately 200 feet by 200 feet.

She alleged that the committee approved her application and the aforesaid parcel of land was allotted to her vide the Plot Allotment Approval which was admitted in evidence as Exhibit "A1".

She said that the land was formally transferred to her upon payment of the sum of N400,000.00 (Four Hundred Thousand Naira) vide a Deed of Transfer/Purchase Receipt admitted as Exhibit "A".

She said that upon acquiring the land, she took immediate physical possession and started exercising acts of ownership by clearing the land and building structures on the land for her poultry farming business.

She said that she commissioned a license surveyor, Surveyor S.O. Ekhsu, to carry out a property survey plan of the land and he produced a Property Survey Plan No. **TDN/ED/386/2019** dated 20/07/2019 which was admitted as Exhibit "B" at the hearing.

She said that subsequently, she was issued with a Certificate of Occupancy which was registered as No. 102 at Page 1 in Volume 8 of the Certificate of Occupancy Digital Register in the EDOGIS Registry Office of Edo State. The Certificate of Occupancy was admitted as Exhibit "C" at the hearing.

She alleged that because of paucity of funds, she could not continue with her poultry farm business but was routinely visiting the land until she gave part of the land to one Mrs. Aghama Obamwonyi to farm it.

She alleged that on the 12th of September 2021, she was informed that some people deposited some trips of sand on the land now in dispute.

She said that she visited the land and discovered that some labourers were moulding concrete blocks on the said piece of land now in dispute and upon accosting them, they refused to disclose the identity of the Defendant who commissioned them to carry out the work.

She said upon repeated visits to the land, she discovered that the Defendant had laid a building foundation on part of her land measuring 100 feet by 100 feet which is now in dispute in this suit.

She said that during the trespass, the Defendant destroyed some of the structures which she built on the land for her poultry farming business.

She said that all her efforts to stop the Defendant and his agents from their acts of trespass proved abortive hence she instituted this suit to seek redress.

Upon the conclusion of the Claimant's evidence, 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 him but he failed to appear in the Court so the Court foreclosed him, and the Claimant closed her case. Eventually, the matter was adjourned for final address.

In his final written address, the learned counsel for the Claimant, **Dr. G.A. Asemota** formulated two issues for determination as follows:

- 1. Having regard to the circumstances of this suit, whether the Claimant has proved her case on the balance of probabilities or on the preponderance of evidence to be entitled to the reliefs sought in her claim; and***
- 2. Whether this Honourable Court can proceed to determine this suit one way or the other in view of the absence of the Defendant who has been foreclosed by this Honourable Court?***

Arguing issue one, the learned counsel submitted that the Claimant has proved her claims on the balance of probabilities to warrant the Court to grant all her reliefs.

He listed the five ways of proving title to land and relied on the following cases: ***IDUNDUN v. OKUMAGBA (1976) 6-10 SC 227 at 247; AGBOOLA v. UBA (2011) 49 NSQR 33 at 34 RATIO 3; AND IBRAHIM v. OBAJE (2006) 2 FWLR (PART 318) 3433, RATIO 3, PARAGRAPHS C-E.***

Arguing further, the learned counsel posited that in this suit, the Claimant has established the identity of her parcel of land which she acquired from her predecessor-in- title by tendering her relevant title documents.

He submitted that the failure of the Defendant to lead evidence to contradict the Claimant lends credence to the Claimant's case and he relied on the following decisions: **MAINAGGE (2004) 12 MJSC 34 AT 36-37, PARAGRAPHS A-C** and **OLOREWAJU v. ILORI (2008) 2 FWLR (PART 415) 1851, PARAGRAPH B.**

On the third and fourth methods of proof, which are by various acts of ownership and acts of long ownership, learned counsel submitted that the Claimant has established these methods by her evidence.

Learned counsel submitted that mere possession is sufficient to found an action for trespass against a wrong doer and he relied on the case of **OLALAYE v. TRUSTEES OF ECWA (2011) 28 NWRN 16 AT 24-25, RATIO 7; AYINDE v. SALAWU (1989) 3 NWLR.**

On issue two, learned counsel submitted that the Court can determine the Claimant's claim in the absence of the Defendant who did not appear in the proceedings let alone to file pleadings in defence of his case.

He submitted that the Court cannot force a party to give evidence in his/her case. He posited that both parties were duly notified of the hearing date of the case and where the Defendant failed to come to Court, the case should be considered on its merit by the Court.

He urged the Court to consider the Claimant's claims and grant all the reliefs sought by her and he relied on the case of: **OLATUNJI v. ADEDAPO (2014) 5 WRN 149 AT 156, RATIO 7.**

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 against 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 Koppek 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 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 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, 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 and enjoyment of the land.

On the proof by the production of title documents, the Claimant tendered a 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 Defendant 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.

In the suit, the Claimant also led evidence to prove her title by acts of ownership and by acts of long possession and enjoyment of the land.

At the hearing, she testified that after acquiring the land in dispute, she took immediate physical possession and started exercising acts of ownership by clearing the land and building structures on the land for her poultry farming business.

She said that she commissioned a license surveyor, Surveyor S.O. Ekhosu, to carry out a property survey plan of the land and he produced a Property Survey Plan No. TDN/ED/386/2019 dated 20/07/2019 which was admitted as Exhibit “B” at the hearing.

Thus, on acts of ownership and long possession of the land, the Claimant led unchallenged evidence to prove that since she acquired the land, she has been in undisturbed possession of the land until the Defendant trespassed into the land. From the uncontroverted evidence of the Claimant, I hold that the Claimant has been in exclusive possession of the land. This evidence of possession is 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.

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.

Lastly on the order for the award of N10, 000,000.00 (Ten 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. See: **Chevron (Nig.) Ltd. vs. Omoregha supra.**

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 of how upon an inspection of the land she discovered that the Defendant had entered the land in dispute, destroyed some of her poultry farm buildings and was erecting a structure on the land. It is apparent that the Claimant has incurred some losses from the destruction of the poultry buildings on the land. Furthermore, the Claimant will expend some funds to demolish the structures erected by the Defendant without her consent. She is therefore entitled to some reasonable compensation to cover all these expenses.

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 legal and rightful owner of all that piece or parcel of land and the appurtenances therein measuring approximately 100 feet by 100 feet lying and situate at Ward 9, Obayantor I Community, Kilometer 12, Off Benin-Sapele Road, Ikpoba-Okha Local Government Area, Benin City which originally formed part of her large piece of land measuring 200 feet by 200 feet more particularly delineated in Property Survey Plan No. TDN/ED/386/2019 dated 26/07/2019 with Certificate of Occupancy No. 91297-v015b-n5450-u015b-n5759-rw452 registered as No. 102 at Page 1 in Volume 8 of the Certificate of Occupancy Digital Register in the EDOGIS Registry Office of Edo State granted by the Governor of Edo State on 14th day of October 2019 within the jurisdiction of this Honourable Court;*
2. *An Order of perpetual injunction restraining the Defendant, either by himself, his agents, servants and/or privies or any other person whatsoever claiming under or through him from further acts of trespass on the said piece or parcel of land measuring approximately 100 feet by 100 feet in any manner whatsoever inconsistent with the Claimant's peaceful use and enjoyment of same;*
3. *N4, 000,000.00 (Four Million Naira) as general damages for trespass against the Defendant in favour of the Claimant;*
4. *An order for possession of the said piece or parcel of land in favour of the Claimant.*

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

P.A. AKHIHIRO
JUDGE
01 /12/2025

COUNSEL:

Dr. G.A. Asemota-----Claimant.

Unrepresented----- Defendant.