

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 TUESDAY
THE 10TH DAY OF FEBRUARY, 2026.

BETWEEN:

SUIT NO. B/538/2022

1. MR. OSAYI JULIUS OBASEKI

(Suing through his Lawful Attorney

MR. IHOGBETIN BRIGHT USIOHEN) -----CLAIMANT

AND

1. MR. JOHNSON ERIMONA

2. CHIEF PATRICK OSAGIE EHOLOR-----DEFENDANTS

JUDGMENT

The Claimant instituted this suit vide a Writ of Summons and Statement of Claim filed on the 25th of May, 2022. However, the Claimant's extant Statement of Claim is his Amended Statement of Claim filed on the 23rd day of June, 2023 in which he claimed against the Defendants as follows:

a) A DECLARATION that the Claimant is the person entitled to the Statutory Right of Occupancy over the piece of land known as Plot No. 52481 Zone LO: B39/OBAYANTOR II/IMASABOR in Ikpoba Okha Local Government Area of Edo State containing an Area of approximately 3.324 hectares more particularly described and delineated in Survey Plan attached to the reverse side of the said Certificate of Occupancy No. EDL 52481 dated the 17th day of November, 2020 and registered as instrument No. 76 at Page 1 in Volume 25

of the Certificate of Occupancy Digital Register in the EDOGIS Registry Office of Edo State.

- b) A DECLARATION that the Claimant is the person entitled to apply for and be granted Statutory Right of Occupancy in and over the piece or parcel of land measuring approximately 400ft by 450ft (Four Hundred Feet by Four Hundred and Fifty Feet) lying and situate at Obayanor II, Km 24, Old Benin-Sapele Road, Benin City, Ikpoba-Okha Local Government Area, Edo State, which piece or parcel of land is more particularly described and delineated in Survey Plan No. SEA/ED/297/2007 dated the 19th day of June, 2007.*
- c) A DECLARATION that the Claimant is the person entitled to apply for and be granted Statutory Right of Occupancy in and over the Claimant's pieces of land totaling 28 (Twenty-Eight) plots lying and situate at Obayanor II, Km 24, Old Benin-Sapele Road, Benin City, Ikpoba-Okha Local Government Area, Edo State, which piece or parcel of land is more particularly described and delineated in Survey Plan No. TDN/ED/272/2008 dated the 10th day of November, 2008.*
- d) AN ORDER of possession of the aforesaid pieces of land.*
- e) N5,000,000.00 (Five Million Naira) being special and general damages against the Defendants for trespass onto the said land.*
- f) AN ORDER of perpetual injunction restraining the Defendants, their servants, agents and privies from committing further acts of trespass onto the aforesaid pieces of land or doing anything inconsistent with the Claimant's title to the said pieces of land whatsoever.*

Upon receipt of the originating processes, the 1st and 2nd Defendants their part filed a Joint Statement of Defence and Counter - Claim on the 12th day of March, 2024 and Counter-Claimed against the Claimant as follows:

- A. A DECLARATION that the Defendants are the owners of all that land lying and situate along Benin Sapele Road, on the left hand side when moving from Benin to Sapele sharing common boundary with the land of His Royal Majesty, Oba of Benin, and more particularly shown in the survey plan made by the Oba of Benin for the Erimona family in 1987 in Plan No: MWC/357/87;*
- B. AN ORDER of perpetual injunction restraining the Claimant, his agents, assigns, any person(s) claiming through him further act of trespass on the aforesaid Defendants' land; and*
- C. AN ORDER of N999,000.00 (Nine Hundred and Ninety Nine Thousand Naira) only as general damages.*

After filing their defence, the Defendants were continuously absent from court. However, their counsel was present in court to cross examine the Claimant's Lawful Attorney after several hearing notices were served on him. After cross-examining the Claimant's Lawful Attorney, the suit was fixed for defence and again the Defendants were absent from without any explanation. The Defendants were thus foreclosed on the application of the Claimant's counsel. The Defendants' counsel, however, brought an application to set aside the order of foreclosure and the order was set aside by this Court and the matter was further adjourned for defence.

On the date of defence, the Defendants' counsel was again absent, and the matter was fixed for definite hearing. On the date the matter was fixed for definite hearing, the Defendants' counsel was present in Court, but he was not ready to defend this suit. Thus, the Defendants were again foreclosed from defending this case and this suit was adjourned for final address.

It is, however, pertinent to note that the Defendants filed a Statement of Defence and Counter-Claim but they failed to adduce any evidence in defence of the suit or in proof of their Counter-Claim. It is settled law that where a Defendant fails to call evidence in support of his pleadings after being given ample opportunity, the pleadings are deemed abandoned, and the Claimant's case stands unchallenged. See the following cases on the point: *Mobil Oil (Nig.) Plc v. Assan* (2003) 6 NWLR (Pt. 816) 308 (CA), See also, *Ajiboye v. Ishola* (2006) 13 NWLR (Pt. 998) 628 (SC); *Okoebor v. Police Council* (2003) 12 NWLR (Pt. 834) 444 (SC); *University of Lagos v. Aigoro* (1985) 1 NWLR (Pt. 1) 143 (SC); *A.G. Federation v. Abubakar* (2007) 10 NWLR (Pt. 1041) 1 (SC); *Dantata v. Mohammed* (2012) 8 NWLR (Pt. 1302) 366 (SC).

In essence, the suit was undefended and the Counter-Claim was abandoned.

At the hearing of this suit the Claimant's Lawful Attorney testified on behalf of the Claimant who is resident Benin City and Canada.

The Claimant's Lawful Attorney testified that the 1st Defendant is an Itsekiri by tribe whose grandfather is alleged to have farmed in Obayantor II Community some decades ago and the 2nd Defendant is a Bini by tribe.

He alleged that Obayantor II Community where the Claimant duly acquired his pieces of land is lying and situate at Kilometer 24 along Benin Sapele Road and that the entire land in the community is communally owned.

He explained the system of acquisition of land in Obayantor II Community. According to him, the community, through its Odionwere and elders allocate pieces of land to individual members of the community that apply for a piece of land and the said piece of land when allocated becomes the property of the allottee.

The Claimant's Lawful Attorney testified that Obayantor II Community was founded by Pa Obasuyi Ediae of blessed memory in 1894 and was known as AGO OBASUYI (Obasuyi Camp). He said that the said Pa Obasuyi Ediae founded the camp for agricultural purposes, and that after Pa Obasuyi Ediae founded the camp, he set up various farms and settlements for the numerous workers he had in the camp.

He said that as Pa Obasuyi Ediae's farming activities prospered in the camp other people joined him as the land was very fertile for arable and economic crops. He said that as other people joined him, the new settlers also deforested their own farm lands and settlements.

He further alleged that as the camp grew tremendously, Pa Obasuyi Ediae made representation to the then Oba of Benin, Oba Eweka II for the traditional live trees Nibodia Specie (Ikhinmwin trees) to be planted for him, which request was granted.

He stated that with the planting of the said Ikhinmwin trees, Obayantor II Community became an independent and autonomous community with its administrative organs subject, however, to the over-lordship of the Oba of Benin.

The Claimant's lawful attorney testified that being the first person to settle in Obayantor II Community, Pa. Obasuyi Ediae became the pioneer or first traditional head (Odionwere) of Obayantor II in accordance with Benin Native Law and Custom.

He said that the whole of Obayantor II Community lands belongs to the people of Obayantor II Community, and that the Odionwere and Elders of the Community manage same for the people under the Benin Customary Land Tenure System.

The Claimant's lawful attorney explained that after the promulgation of the Land Use Act, the Governor of each State retains the power to grant Certificate of Occupancy to the indigenes of their various states and the members of each community still retain right of ownership of their lands and could alienate and or transfer to anyone who could apply to the Governor for Statutory Right of Occupancy.

He said that individual farmers who deforested virgin forest for farming in Benin Kingdom including Obayantor II Community only have the right to use that land and are also entitled to the crops they have planted thereon and have no right of ownership over the farm lands except they apply to the Oba of Benin for a grant of the said land before the Land Use Act of 1978 and to the community after 1978.

He alleged that if the community exercises its right to grant ownership to an individual who applies to the Odionwere and elders of the community and the farmer is only entitled to compensation for the crops he has planted on the land from the allottee.

The Lawful Attorney alleged that the 1st Defendant's grandfather was an Itsekiri man from the present day Delta State and that the said grandfather deforested large parcels of land for farming activities but before his demise, he neither applied to the Oba of Benin or later to the Odionwere and elders of Obayantor II Community for a grant of ownership in and over the vast parcels of land he deforested.

He stated that the 1st Defendant grandfather and his descendants are only entitled to compensation for the crops they planted on the land from the persons the community has allocated the land over which the 1st Defendant's grandfather was farming and nothing more.

He maintained that the vast expanse of land deforested by the 1st Defendant's grandfather has become part of Obayantor II Community land in accordance with the Benin Customary Land Tenure System.

The Claimant's Lawful Attorney stated that sometime in 2007, there was a land or boundary dispute between Obayantor II and Imasabor Village and the dispute was referred to the Oba of Benin for Customary arbitration and the Oba of Benin resolved the dispute in favour of Obayantor II Community and held that the land does not belong to the 1st Defendant's grandfather because he was only using the said land for farming purposes and never applied for or was granted right of ownership of the said land.

He alleged that the 1st Defendant has habitually been laying spurious claim to ownership of Obayantor II Community land on the ground that his grandfather farmed on the land.

He further stated that one of the Claimant's predecessors-in-titles, Mr. John Ehiorobo, applied for a piece of land measuring 300ft by 500ft (Three Hundred Feet by Five Hundred Feet) by application for Building Plot dated the 15th day of August, 2008, which application was routed through Obayantor II Land Use Committee to the Odionwere and Elders of Obayantor II Community. He said that this application was duly granted and approved on the 15th day of August 2008. The said Application for Transfer of Building Plot dated 15/8/2008 was tendered in evidence and admitted as ***Exhibit "A"***.

The Claimant's lawful attorney further testified that consequent upon the aforesaid approvals, the said Mr. John Ehiorobo immediately took possession of the said parcels of land by clearing same and commenced various acts of possession and ownership on the land.

The Claimant's Lawful Attorney testified that the Claimant subsequently approached the said John Ehiorobo to transfer his entire interests in his said parcels of land to him which request the said John Ehiorobo granted and transferred his entire parcels of land

to the Claimant via a Deed of Transfer dated the 22nd day of January, 2010. This said Deed of Transfer dated 22/1/2010 was tendered in evidence as a receipt and admitted as ***Exhibit “B”***.

The Claimant’s lawful attorney further stated that the Claimant immediately took possession of the said land by carrying out property survey of the said land and other acts of possession and ownership in and over the said land.

The Claimant’s lawful attorney further testified that by application for Building Plot dated the 25th day of September, 2007, which was routed through the Obayantor II Land Use Committee to the Odionwere and Elders of Obayantor II Community, and duly approved by the said Odionwere and Elders of Obayantor II, another of the Claimant’s predecessors-in-title, Mr. Felix Isibor, acquired a piece or parcel of land measuring 200ft by 500ft (Two Hundred Feet by Five Hundred Feet) lying and situate at Obayantor II Community. This said application for Transfer of Building Plot dated 25/9/2007 was tendered in evidence and admitted as ***Exhibit “C”***.

The Claimant’s lawful attorney testified that consequent upon the aforesaid approval, the said Felix Isibor also took immediate possession of the said land.

He testified that subsequently, the said Felix Isibor transferred his entire piece of land measuring 200ft by 500ft (Two Hundred Feet by Five Hundred Feet) to the Claimant via a Deed of Transfer dated the 21st day of September, 2008. This said Deed of Transfer dated 21/9/2008 was tendered in evidence and admitted as ***Exhibit “D”***.

The Claimant’s lawful attorney testified that the Claimant also took possession of this said land, surveyed it and embarked on other sundry acts thereon without any let or hindrance from anybody including the Defendants.

The Claimant’s lawful attorney further testified that by application for a Building Plot dated the 17th day of August, 2008 routed through the Obayantor II Land Use Committee to the Odionwere and Elders of Obayantor II Community, another of the Claimant’s predecessors-in-title, late Mr. Benson Obasuyi applied for a Building Plot measuring 200ft by 500ft (Two Hundred Feet by Five Hundred Feet) lying and situate at Obayantor II Community, which application was duly approved on the 17th day of August, 2008. This said Application for Transfer of Building Plot dated 17/8/2008 was tendered in evidence and admitted as ***Exhibit “E”***.

The Claimant’s Lawful Attorney testified that the said Benson Obasuyi subsequently transferred his said piece of land measuring 200ft by 500ft (Two Hundred Feet by Five Hundred Feet) to the Claimant via a Deed of Transfer dated the 21st day of September, 2008. The said Deed of Transfer dated 21/9/2008 was tendered in evidence and admitted as ***Exhibit “F”***.

He testified that the Claimant immediately took possession of the said land by carrying out property survey and exercising acts of possession and ownership in and over the said land without any let or hindrance from anybody including the Defendants. The Survey Plan with Plan No. TDN/ED/272/2008 was admitted in evidence as *Exhibit “G”*.

The Claimant’s Lawful Attorney further testified that since the above separate pieces of land acquired by the Claimant from his three predecessors-in-title are contiguous, the Claimant decided to make a composite plan consisting of all the said parcels of land amounting to 34 (Thirty-Four) plots.

He said that the Claimant later applied to the Executive Governor of Edo State for a grant of Statutory Right of Occupancy in and over his said land through the EDOGIS, which application was duly granted by the Governor of Edo State Mr. Godwin Nogheghase Obaseki and was issued Certificate of Occupancy dated the 17th day of November, 2020 and registered as Instrument No. 76 at Page 1 in Volume 25 of the Certificate of Occupancy Digital Register in the EDOGIS Registry Office of Edo State. The Certificate of Occupancy dated 17/11/2020 was admitted as *Exhibit “H”*.

The Claimant’s lawful attorney stated that the Claimant has been leasing, renting and permitting his licensees to make use of his said parcels of land including leasing same to Zakhem Construction Limited who occupied the same land for over 10 (ten) years and for all that period of time neither the 1st Defendant nor the 2nd Defendant laid claim or disturbed the Claimant’s tenant’s possession over the land. Two digital photographs showing the said Zakhem Construction Company’s possession of the said land were tendered in evidence and admitted as *Exhibits “I(1)” and “I(2)”* respectively.

The Claimant’s lawful attorney testified that another of the Claimant’s predecessor-in-title, Mr. Festus Omorodion Aghedo, applied for a piece of land measuring 300ft by 400ft (Three Hundred Feet by Four Hundred Feet) by application for a Building Plot dated the 22nd day of January, 2007, which was routed through Obayantor II Land Use Committee to the Odionwere and elders of Obayantor II Community and duly granted and approved on the 20th day April, 2007. A Photocopy of the Application for Transfer of Building Plot dated 22/1/2007 was admitted as *Exhibit “J”*.

He further testified that consequent upon the aforesaid approval, the said Festus Omorodion Aghedo immediately took possession of the said land by clearing same and commenced various acts of possession and ownership on the land.

He said that the Claimant subsequently purchased a portion of the said land measuring 300ft by 300ft (Three Hundred Feet by Three Hundred Feet) from Festus Omorodion Aghedo vide a Deed of Transfer made in 2007 which was admitted as *Exhibit “K”*.

He testified that the Claimant immediately took possession of the said land by carrying out property survey of the said land and other acts of possession and ownership in and over the said land.

The Claimant's lawful attorney testified that by an application for Transfer of Building Plot dated the 23rd of April, 2007, which application was routed through the Obayantor II Land Use Committee to the Odionwere and Elders of Obayantor II Community Kilometre 24, Benin-Sapele Road, Benin City, Ikpoba Okha Local Government Area, Edo State, the Claimant applied for a piece of land measuring 100ft by 350ft (One Hundred Feet by Three Hundred and Fifty Feet), which application was duly approved and granted on the 6th day of May, 2007. The Application for Transfer of Building Plot dated 6th of May 2007 was admitted as ***Exhibit "L"***.

The Claimant's lawful attorney also testified that by another application for Transfer of Building Plot dated the 30th day of May, 2007 routed through the Obayantor II Land Use Committee to the Odionwere and Elders of Obayantor II Community, Kilometre 24, Benin-Sapele Road, Benin City, Ikpoba-Okha Local Government Area, Edo State, the Claimant applied for another piece of land measuring 100ft by 100ft (One Hundred Feet by One Hundred Feet) lying and situate at Obayantor II Community, which application was duly approved and granted by the said Odionwere and Elders of Obayantor II Community on the 10th day of June, 2007. The Application for Transfer of Building Plot dated 30/5/2007 was admitted as ***Exhibit "M"***.

The Claimant's lawful attorney stated that the above three separate pieces of land which the Claimant acquired were also contiguous, so the Claimant decided to make a composite plan of the three parcels of land consisting of 13 1/2 (Thirteen and Half) plots. The Composite Survey Plan No. SEA/ED/297/07 was admitted as ***Exhibit "N"***.

The Claimant's lawful attorney again testified that one of the Claimant's said predecessors-in-titles Mr. John Ehiorobo applied for a piece of land measuring 100ft by 500ft (One Hundred Feet by Five Hundred Feet) by application for a Building Plot dated the 29th day of March, 2007, which application was routed through Obayantor II Land Use Committee to the Odionwere and elders of Obayantor II Community and duly granted and approved on the 21st day May, 2007.

He further averred that by another application for Building Plot made by the said Mr. John Ehiorobo dated the 6th day of September, 2010, which application was routed through the Obayantor II Land Use Committee to the Odionwere and Elders of Obayantor II Community, the said John Ehiorobo applied for a piece or parcel of land measuring 100ft by 300ft (One Hundred Feet by Three Hundred Feet), which application was duly granted and approved on the 7th day of September, 2010. The Application for Transfer of Building Plot dated 6/9/2010 was admitted as ***Exhibit "O"***.

He also testified that by a third application for Transfer of Building Plot made by the said Mr. John Ehiorobo dated the 20th day of August, 2008, which application was routed through the Obayantor II Land Use Committee to the Odionwere and Elders of Obayantor II Community, the said John Ehiorobo applied for a piece of land measuring 100ft by 200ft (One Hundred Feet by Two Hundred Feet), which application was duly approved on the 22nd day of September, 2008.

The Claimant's lawful attorney testified that consequent upon the aforesaid approvals, the said John Ehiorobo immediately took possession of the said parcels of land by clearing same and commenced various acts of possession and ownership thereon.

He further alleged that the Claimant subsequently approached the said John Ehiorobo to transfer his entire interests in his said parcels of land to him which request the said John Ehiorobo granted and transferred his entire parcels of land to the Claimant. The Deed of Transfer made in 2012 was admitted as *Exhibit "P"*.

He also stated that by application for Building Plot dated the 21st day of August, 2008, which application was routed through the Obayantor II Land Use Committee to the Odionwere and Elders of Obayantor II Community, and duly approved by the said Odionwere and Elders of Obayantor II, another of the Claimant's said predecessors-in-title Mr. Felix Isibor acquired title to a piece or parcel of land measuring 200ft by 500ft (Two Hundred Feet by Five Hundred Feet) lying and situate at Obayantor II Community which application was approved on the 21st day of August, 2008. The Application for Transfer of Building Plot dated 21/8/2008 was admitted as *Exhibit "Q"*.

The Claimant's lawful attorney testified that the Claimant later purchased the land from Mr. Felix Isibor vide a Deed of Transfer dated the 21st day of September, which was admitted as *Exhibit "R"*.

He further testified that by an application for Building Plot dated the 29th day of April, 2007 routed through the Obayantor II Land Use Committee to the Odionwere and Elders of Obayantor II Community, another of the Claimant's predecessors-in-title, Late Mr. Josiah Osamudiamen applied for a Building Plot measuring 100ft by 300ft (One Hundred Feet by Three Hundred Feet) lying and situate at Obayantor II Community, which application was duly approved on the 21st day of May, 2007. The Application for Transfer of Building Plot dated 29/4/2007 is admitted as *Exhibit "S"*.

The Claimant's lawful attorney testified that the Claimant later purchased a portion of the said piece of land measuring 100ft by 200ft (One Hundred Feet by Two Hundred Feet) vide an undated Deed of Transfer made in 2008 which was admitted as *Exhibit "T"*.

The Claimant's lawful attorney further testified that the Claimant also later personally applied for a piece or parcel of land measuring 100ft by 200ft (One Hundred Feet by Two Hundred Feet) via application for Transfer of Building Plot dated the 17th day of August, 2008 routed through the Obayantor II Land Use Committee to the Odionwere and Elders of Obayantor II, which application was duly approved by the said Odionwere and Elders of Obayantor II Community on the 17th day of August, 2008. The Application for Transfer of Building Plot dated 17/8/2008 was admitted as *Exhibit "U"*.

He testified that the above separate pieces of land the Claimant acquired from his three predecessors-in-title and by himself were contiguous, so the Claimant made a composite plan consisting of 28 (Twenty-Eight) Plots. The Survey Plan No. TDN/ED/272/2008 was admitted as *Exhibit "V"*.

The Claimant's lawful attorney further stated that his ownership of his aforesaid plots of land is no longer in doubt as the Odionwere and elders of Obayantor II community have acknowledged in writing his ownership of the said parcels of land vide a document titled: DECLARATION/VALIDATION OF LAND TRANSFERRED TO MR. JULIUS OSAYI OBASEKI BY SOME OBAYANTOR II COMMUNITY INDIGENES. The Document dated 10/03/2021 was admitted as *Exhibit "W"*.

He testified that when late Erimona, the grandfather of the 1st Defendant died over 50 (Fifty) years ago, the 1st Defendant was not yet born while the 2nd Defendant was less than 10(Ten) years old and could not have entered into any land transfer transaction with the said grandfather of the 1st Defendant or acquired any land from the said late Erimona.

He further stated that the 2nd Defendant does not and has never owned or acquired any land in Obayantor II near or around the Claimant's land now being put in dispute by the Defendants.

After the Claimant's lawful attorney's testimony, this suit was adjourned for cross examination. Under cross examination, the Claimant's lawful attorney testified that he does not know the 1st Defendant by face, but he knows the 2nd Defendant. He said that he is familiar with the land in dispute, and the land is at Ward 9, Obayantor Community in Ikpoba Okha L.G.A. He said that he is not an indigene of Obayantor community, but he is familiar with how land is allocated in Obayantor community. He also said that he has heard of Pa. Obasuyi Ediae, and that Pa. Obasuyi Ediae was the founder of Obayantor community. He said that he was told that one Pa. Ehiorda was the first Odiowere of Obayantor community, and that he knows something about this case.

Subsequently, the Defendants and their counsel abandoned the case, the Defendants were foreclosed from defending this suit and only the Claimant's counsel filed a final written address.

In his final written address, learned counsel for the Claimant, *S. O. Agwinede Esq.* raised a sole issue for determination as follows:

“Whether from the state of pleadings and the oral and documentary evidence adduced therefrom, the Claimant has established his case to be entitled to the declaratory, injunctive and other reliefs he is claiming in this suit?”

Learned counsel submitted that the Claimant has established his case by credible and admissible oral and documentary evidence to entitle him to the declaratory, injunctive and other reliefs he is claiming in this suit. He said that the Claimant, in proof of his case testified through his Lawful Attorney as his sole witness.

He submitted that a Claimant does not need to call a host or particular number of witnesses to succeed in his case except the law requires him to do so. He said that *a fortiori*, a single witness' testimony can establish the case of a Claimant. On this learned counsel relied on the case of ***AGBI & ANOR V. OGBEH & ORS (2006) 11 N.W.L.R. Part 990 page 65 especially at page 125 paragraph. G*** where the Supreme Court per ***KUTIGI J.S.C.*** (as he then was) stated the position of law lucidly as follows:

“However, the general rule is that no particular number of witnesses is required for proof of any fact unless expressly prescribed by law. It follows therefore that in civil cases, a plaintiff can establish his case on the evidence of a single witness without a confirmation by the testimony of another person.”

Learned counsel enumerated the five ways of proving title to land and cited the cases of ***D.O. Idundun & Ors. V. Okumagba (1976) 9 & 10 S.C. 227 at 246-150; Atanda V. Ajani (1980) 3 N.W.L.R Pt 111, 511; Anyanwu V. Mbara (1992) 5 N.W.L.R Pt. 242, 382; and Balogun & Ors. v. Akanji & Anor (1998) Vol. 19 1 N.S.C.C. 180.***

Learned counsel submitted that the Claimant in the instant case has established at least three of the methods of proving title, to wit:

- (1) Production of document of title
- (2) Proof of acts of ownership
- (3) Proof of acts of long possession and enjoyment

Learned counsel posited that the Claimant tendered Exhibits A-Y. He submitted that the various land allocation papers issued by the various communities in Benin Districts

are now valid and competent land title documents. He argued that the extinguishing of the power of the Oba of Benin to issue Approvals over land in Benin has created lacuna and ambivalent situation especially as to the validity of other title documents emanating from Benin area other than Certificate of Occupancy issued by the Governor of the State or the Customary Right of Occupancy issued by the Local Government Chairman in the rural areas.

Learned counsel stated that statutorily, this situation has now been rectified by the enactment of the ***Edo State Private Properties Protection Law, 2021***. He said that the Edo State Governor in exercise of his powers under ***section 1 of the Land Use Act*** has vested powers to issue written permission to any person to deal with land in the various communities on the Traditional Head of each community. Learned counsel reproduced ***Sections (2) and (3) of the said Private Properties Protection Law, 2021*** as follows:

“(2) No Community Development Association, Youth Organization or other Community bases organization or body by whatever name called, shall deal with any community land in any manner whatsoever except with the express written permission or authority of the Traditional Head of Community.

(3) The Traditional Head of every Community shall, in the exercise of his authority under subsection (2) of this section be subject to the control and supervision of the Paramount Authority in charge of the Community.”
(Underlining mine for emphasis)

Learned counsel argued that the land Allocation papers emanating from the various Communities are now valid title documents as they are now rooted in a valid Statutory substratum, that is, the ***Edo State Private Properties Protection Law, 2021***. He said that the various land allocation papers issued to the Claimant's predecessor-in-title are valid title documents as they were issued with the authority of the Odionwere of Obayantor II, which community has no Enogie.

He further submitted that the Claimant has exercised long acts of ownership and possession over the land in dispute. He said that the Claimant leased a portion of the land to Zakhehm Construction Limited who occupied the said portion of the land for a period of over ten years.

Learned counsel submitted that digital photographs showing Zakhehm Construction Limited yard were tendered as Exhibits i(1) and i(2) respectively. He said that the Claimant also carried out various property survey plans over the said land.

Learned counsel asserted that these are acts of ownership and long possession in and over the land in dispute. He relied on the case of ***MR. EMMANUEL ADENIRAN V.***

MR. EMMANUEL ALAO & ANOR (2002) F.W.L.R. Part 90 page 1285 at page 1304.

He further submitted that the Claimant has established with utmost certainty the identity of the various parcels of land over which he is seeking the declaratory and injunctive orders of this Honourable Court by tendering the various survey plans of the various parcels of land now put in dispute by the Defendants.

He submitted that a survey plan is the best way of identifying, describing and delineating a piece of land in dispute. On this he relied on the case of **EIGBEJIALE V. OKE & ORS (1996) 5 N.W.L.R. Part 447 page 128 Particularly at page 144.**

Learned counsel submitted that documentary evidence are more reliable than oral evidence and serves as hanger from which the veracity of oral evidence is assessed and tested. He cited the case of **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) & ORS V. OSHIOMHOLE & ORS (2009) 4 N.W.L.R. Part 1132 page 607 especially at page 665.**

Learned counsel urged this Court to ascribe the highest probative values to the various documentary evidence tendered by the Claimant in proof of his case.

He also urged this Court to accept the unchallenged, unrebutted and uncontradicted evidence of the Claimant's sole witness which he said will profoundly induce belief from any Court or Tribunal. He relied on the case of **KARIMU OLUJINLE V. BELLO ADEAGBO (1988) 4 S. C. Page 1 especially at page 23.**

Learned counsel submitted that it is not the business of the Court to inquire why a party who was aware of the hearing date, failed to attend the Court. He said that the Court is duty bound to proceed and determine the case on the evidence presented by the Claimant. On this submission, learned counsel relied on the cases of **OBIMIAMI BRICK & STONE (NIG) LTD V. AFRICAN CONTINENTAL BANK LIMITED (1992) 3 N.W.L.R. Part 229 page 260 at page 296; and THE VESSEL MT. SEA TIGER & ANOR V. ACCORD SHIP MANAGEMENT (HK) LTD & ANOR (2020) 14 N.W.L.R. Part 1745 page 418 particularly at page 453.**

He urged this Court to hold that the Claimant has duly discharged the evidential burden which is not lightened by the failure of the Defendants to lead evidence on their pleadings, and which the Claimant has amply discharged by the credible and admissible oral and documentary evidence he has adduced as a Claimant for declaratory title to land and other ancillary reliefs.

Finally, he 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 during the hearing and the address of the learned Counsel for the Claimant.

As I have already observed, the Defendant did not call evidence in support of his pleadings after being given ample opportunity. Thus, the Defendant's pleadings are deemed abandoned, and the evidence of the Claimant remains unchallenged.

Furthermore, although the Defendants filed a Counter-Claim, they did not lead any evidence to prove their Counter-Claim. It is settled law that a Counter Claim is an independent and separate action triable with the main claim for reason of convenience. Like the main claim, a Counter Claim must also be proved by the Counter Claimant in order to succeed. See the following cases: ***BILANTE INTL LTD VS. NDIC (2011) 15 NWLR (PT 1270) 407; NSEFIK & ORS VS. MUNA & ORS (2013) VOL 12 MJSC (PT1) 116; KOLADE VS. OGUNDOKUN (2017) 18 NWR (PT 1596) 152 and MULTICHOICE (WIG) LTD VS. M.C.S. N. LTD/GTE (2020) 13 NWLR (PT 1742) 415.***

From the foregoing, the Counter-Claim is deemed to have been abandoned and is accordingly dismissed.

In this suit, the evidence adduced by the Claimant was not controverted by the Defendants. 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, the Claimant is relying on the second, third and fifth means of proof, namely: proof by production of documents of title, proof by acts of ownership, and proof by acts of long possession and enjoyment of the land

On the proof by documents of title, the Claimant tendered 23 documents namely:

1. *John Ehiorobo's Application for plot of land approved by Obayantor II Community tendered as Exhibit A.*
2. *Deed of Transfer between the said John Ehiorobo and the Claimant tendered as Exhibit B.*
3. *Felix Isibor's Application for plot of land approved by Obayantor II Community tendered as Exhibit C.*
4. *Deed of Transfer between the said Felix Isibor and the Claimant tendered as Exhibit D.*
5. *Benson Obasayi Application for plot of land approved by Obayantor II Community tendered as Exhibit E.*
6. *Deed of Transfer between the said Benson Obasayi and the Claimant tendered as Exhibit F.*
7. *Composite Survey Plan tendered as Exhibit G.*
8. *Claimant's Certificate of Occupancy tendered as Exhibit H.*
9. *Digital Photography tendered as Exhibits I (1) and I (2) .*
10. *Festus Omorodion Aghedo Application for plot of land approved by Obayantor II Community tendered as Exhibit J.*
11. *Deed of Transfer between the said Festus Omorodion Aghedo and the Claimant as Exhibit K.*
12. *Claimant's Application for plot of land approved by Obayantor II Community tendered as Exhibit L.*
13. *Claimant's Application for plot of land approved by Obayantor II Community tendered as Exhibit M.*
14. *Composite Survey Plan tendered as Exhibit N.*

- 15. John Ehiorobo's Application for plot of land approved by Obayantor II Community tendered as Exhibit O.*
- 16. Deed of Transfer between the said John Ehiorobo and the Claimant tendered as Exhibit P.*
- 17. Felix Isibor's Application for plot of land approved by Obayantor II Community tendered as Exhibit Q.*
- 18. Deed of Transfer between the said John Ehiorobo and the Claimant tendered as Exhibit R.*
- 19. Josiah Osamdiamen's Application for plot of land approved by Obayantor II Community tendered as Exhibit S.*
- 20. Deed of Transfer between the said Josiah Osamdiamen and the Claimant tendered as Exhibit T.*
- 21. Claimant's Application for plot of land approved by Obayantor II Community tendered as Exhibit U.*
- 22. Composite Survey Plan tendered as Exhibit V.*
- 23. Declaration of Claimant's Ownership of the land by Odionwere and elders of Obayantor II Community tendered as Exhibit W.*

In this suit, the Claimant is seeking *inter-alia* a declaration that he is entitled to “*the Statutory Right of Occupancy piece over a piece of land known as Plot No. 52481 Zone LO: B39/OBAYANTOR II/IMASABOR in Ikpoba Okha Local Government Area of Edo State containing an Area of approximately 3.324 hectares more particularly described and delineated in Survey Plan attached to the reverse side of the said Certificate of Occupancy No. EDL 52481 dated the 17th day of November, 2020 and registered as instrument No. 76 at Page 1 in Volume 25 of the Certificate of Occupancy Digital Register in the EDOGIS Registry Office of Edo State.*”

In respect of the above claim, the Claimant tendered a Certificate of Occupancy dated 17th November, 2020. The C of O is in respect of Plot No. 52481 Zone LO:

B39/OBAYANTOR II/IMASABOR in Ikpoba Okha L.G.A., Edo State was admitted as ***Exhibit “H”***.

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 H. In the absence of any challenge to Exhibit H, I hold that it will suffice to establish the Claimant's title regarding the first claim.

On his second claim, the Claimant is seeking “*A DECLARATION that the Claimant is the person entitled to apply for and be granted Statutory Right of Occupancy in and over the piece or parcel of land measuring approximately 400ft by 450ft (Four Hundred Feet by Four Hundred and Fifty Feet) lying and situate at Obayantor II, Km 24, Old Benin-Sapele Road, Benin City, Ikpoba-Okha Local Government Area, Edo State, which piece or parcel of land is more particularly described and delineated in Survey Plan No. SEA/ED/297/2007 dated the 19th day of June, 2007.*”

With respect to the above claim, the Claimant led uncontradicted evidence of various acts of possession and tendered the survey plan no. SEA/ED/297/2007 dated the 19th day of June, 2007. The plan was admitted in evidence as ***Exhibit “N”***. The Claimant's action in surveying the property is evidence of act of possession. 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* expounded 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 relief for a declaration that he is the rightful owner of the land described and delineated in Survey Plan No. SEA/ED/297/2007 dated the 19th day of June, 2007, and is thus entitled to apply and be granted Statutory Right of Occupancy in respect of the said land.

The Claimant is also seeking a declaration that he is “*the person entitled to apply for and be granted Statutory Right of Occupancy in and over the Claimant’s pieces of land totaling 28 (Twenty-Eight) plots lying and situate at Obayantor II, Km 24, Old Benin-Sapele Road, Benin City, Ikpoba-Okha Local Government Area, Edo State, which piece or parcel of land is more particularly described and delineated in Survey Plan No. TDN/ED/272/2008 dated the 10th day of November, 2008.*”

With respect to the above the Claimant also led evidence of his various acts of possession and tendered the Survey Plan No. TDN/ED/272/2008 which was admitted as *Exhibit “V”*. Based on the evidence of the Claimant’s undisputed acts of possession and ownership, I also hold that he is entitled to apply and be granted Statutory Right of Occupancy over the land described and delineated in Survey Plan No. TDN/ED/272/2008 dated the 10th day of November, 2008.

In this suit, the Claimant is also seeking an order of possession of the aforesaid parcels of land. The Claimant led unchallenged evidence to prove that since he acquired the land, he has been in undisturbed possession of the land until the Defendants trespassed into the land. From the uncontroverted evidence of the Claimant, I hold that the Claimant is entitled to an order for possession.

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 ₦5,000,000.00 (Five Million Naira) being special and 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.*

Special damages, on the other hand, must be specifically pleaded and strictly proved, as the court is not entitled to make any award thereon based on speculation or conjecture. The claimant must establish special damages by credible and concrete evidence showing the exact loss suffered. See *A.G. Federation v. Abubakar (2007) 10 NWLR (Pt. 1041) 1; Dumez (Nig.) Ltd. v. Ogboli (1972) 1 All NLR (Pt. 1) 241.*

In the instant case, the Claimant failed to place before this Court any credible evidence in proof of the alleged special damages claimed. Consequently, the claim for special damages fails and is hereby refused. However, having regard to the evidence adduced before the Court and the established fact of trespass, the Claimant is entitled to general damages.

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 Defendants.

It is clear that the Claimant has expended much effort and resources in prosecuting this suit arising from the acts of trespass of the Defendants. He is therefore entitled to

general damages. 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. The Defendants' Counter-Claim is dismissed and judgment is entered in favour of the Claimant as follows:

1. *A DECLARATION that the Claimant is the person entitled to the Statutory Right of Occupancy over the piece of land known as Plot No. 52481 Zone LO: B39/OBABANTOR II/IMASABOR in Ikpoba Okha Local Government Area of Edo State containing an Area of approximately 3.324 hectares more particularly described and delineated in Survey Plan attached to the reverse side of the said Certificate of Occupancy No. EDL 52481 dated the 17th day of November, 2020 and registered as instrument No. 76 at Page 1 in Volume 25 of the Certificate of Occupancy Digital Register in the EDOGIS Registry Office of Edo State;*
2. *A DECLARATION that the Claimant is the person entitled to apply for and be granted Statutory Right of Occupancy in and over the piece or parcel of land measuring approximately 400ft by 450ft (Four Hundred Feet by Four Hundred and Fifty Feet) lying and situate at Obayantor II, Km 24, Old Benin-Sapele Road, Benin City, Ikpoba-Okha Local Government Area, Edo State, which piece or parcel of land is more particularly described and delineated in Survey Plan No. SEA/ED/297/2007 dated the 19th day of June, 2007;*
3. *A DECLARATION that the Claimant is the person entitled to apply for and be granted Statutory Right of Occupancy in and over the Claimant's pieces of land totaling 28 (Twenty-Eight) plots lying and situate at Obayantor II, Km 24, Old Benin-Sapele Road, Benin City, Ikpoba-Okha Local Government Area, Edo State, which piece or parcel of land is more particularly described and delineated in Survey Plan No. TDN/ED/272/2008 dated the 10th day of November, 2008;*
4. *AN ORDER of possession of the aforesaid pieces of land;*
5. *N2,000,000.00 (Two Million Naira) being general damages against the Defendants for trespass onto the said land; and*

6. *AN ORDER of perpetual injunction restraining the Defendants, their servants, agents and privies from committing further acts of trespass onto the aforesaid pieces of land or doing anything inconsistent with the Claimant's title to the said pieces of land whatsoever.*

The Defendants shall pay the sum of ₦200, 000.00 (Two Hundred Thousand Naira) to the Claimant as costs.

P.A. AKHIHIERO
JUDGE
10/02/2026

COUNSEL:

S. O. Agwinede Esq. with C.I. Ejoba Esq.----- ***Claimant.***

M. N. Namuna Esq. ----- ***Defendants.***