

**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 20<sup>TH</sup> DAY OF APRIL, 2025.**

**BETWEEN:**

**SUIT NO. B/425/2021**

**GODWIN ASEMOTA -----CLAIMANT**

**AND**

- 1) OSAGIE OBAKHAVBAYE**
- 2) ISOWA OBAKHAVBAYE**
- 3) NOSA OBAKHAVBAYE**
- 4) OSAYANDE OBAKHAVBAYE -----DEFENDANTS**
- 5) EDDY OBAKHAVBAYE**
- 6) DANIEL OBAKHAVBAYE**
- 7) STELLA CHRISOPHER OLOGHOYO**

**JUDGMENT**

The Claimant's extant Claim is his Amended Statement of Claim dated and filed on the 28<sup>th</sup> of July 2021 wherein he claims against the Defendants jointly and severally as follows:

- 1) A declaration that the Claimant is the owner and in possession of that piece or parcel of land lying and situate at No. 1, Ologhoyo Street, Ogbe quarters, Benin City measuring 55 feet by 115 feet, together with a bungalow situate on it which**

- he legally purchased and therefore the person entitled to the statutory certificate of occupancy over the land within the jurisdiction of this Honourable Court;*
- 2) A declaration that the Defendants have no right to enter and deprive the Claimant the right to use the premises as his own;*
  - 3) The sum of ₦2,000,000.00 (Two Million Naira) damages for trespass and disturbance of the Claimant from the use of the property; and*
  - 4) An order of perpetual injunction restraining the Defendants, their agents, servants, assigns, privies and work men from further trespass and disturbance of the Claimant on the land.*

In proof of his case, the Claimant testified, called one witness and tendered some documents.

From the evidence which he adduced at the hearing, the Claimant's case is that he is the owner and in possession of a piece or parcel of land together with the building on it measuring 55feet by 115feet, situate at No. 1, Ologhoyo Street, Ogbe quarters, Benin City.

The Claimant alleged that one Obakhavbaye the father of the 1<sup>st</sup> to the 6<sup>th</sup> Defendants, sold the property in dispute which was then an empty land to one late Ologhoyo Okungbowa many years ago.

He said that the said Mr. Ologhoyo Okungbowa having purchased the land from late Obakhavbaye erected a building on it leaving a space behind.

He said that upon the demise of Mr. Ologhoyo Okungbowa, his son Mr. Christopher Ologhoyo inherited the property.

He said that the said Christopher Ologhoyo deposed to an affidavit stating that the documents with which his father purchased the land from the late Obakhavbaye were missing. A Certified true copy of the affidavit was tendered and admitted as Exhibit "C" at the hearing.

The Claimant testified that Mr. Christopher Ologhoyo later sold the property to one Mr. Frank Adun and a receipt was issued for the sale. A Deed of Transfer between the two parties was tendered as a receipt of purchase and admitted as Exhibit "D" at the hearing.

The Claimant alleged that he later bought the property from Mr. Frank Adun and a receipt was issued for the sale. A Deed of Transfer between the Claimant and the said Mr. Frank Adun was tendered as a receipt and admitted as Exhibit “B” at the hearing.

The Claimant alleged that he has been in peaceful possession of the land ever since he purchased it without any disturbance from anybody.

He said that recently, when he started fencing the land, the wife of his predecessor in title; Christopher Ologhoyo, came to him to demand some money for the portion of land behind the land and in the interest of peace, he paid her the sum of ₦250,000.00 (Two Hundred and Fifty Thousand Naira), and she issued a receipt to him. At the hearing, a handwritten receipt was tendered and admitted as Exhibit “E1”.

He said that after he had paid the money to the wife of the former owner of the land, he commenced the erection of the wall fence of the land and the Defendants came with armed thugs to stop the work contending that they are the owners of the land and the building.

He alleged that the 1<sup>st</sup> to the 6<sup>th</sup> Defendants are the children of the late Obakhavbaye, the original owner of the land, while the 7<sup>th</sup> Defendant is the wife of the late Christopher Ologhoyo, who was the first son of Ologhoyo Okungbowa.

He maintained that he is the owner and in possession of the land in dispute having purchased same from the owner.

He said that when the Defendants came to disturb him on the land, he reported them to the Edo State Private Property Protection Committee in Benin City and the 6<sup>th</sup> and 7<sup>th</sup> Defendants were arrested while the others ran away and they made statements under caution, wherein they admitted that their father had a land transaction with late Ologhoyo Okungbowa. The Certified true copies of the statements made by the 6<sup>th</sup> and 7<sup>th</sup> Defendants were admitted as Exhibits “F2” and “F1” respectively at the trial.

He alleged that he has suffered loss and damage by the illegal invasion of his land by the Defendants.

Upon the conclusion of the evidence in chief of the Claimant, the suit was adjourned for Cross examination of the Claimant. Fresh hearing notices were issued and served on all the Defendants.

On the next date, the Defendants failed to come to court to cross-examine him, so they were foreclosed from cross-examining the Claimant and the Claimant was discharged from the witness box.

The Claimant closed his case, the suit was adjourned for defence and fresh hearing notices were issued and served on the Defendants.

On the date fixed for defence, all the Defendants were absent, so the Court foreclosed them and the matter was adjourned for final address.

On the next adjourned date, the Claimant's counsel adopted his written address as his final argument.

In his final written address, the learned counsel for the Claimant, *A.E. Oaikhena Esq.* formulated two issues for determination as follows:

- 1) Whether the Claimant has sufficiently proved his title to the land in dispute, and has established his claim before court entitling him to a declaration of title over the said land, and the grant of his claim on the preponderance of evidence/ balance of probability as required by law; and*
- 2) Whether the unchallenged and uncontroverted evidence of the Claimant is enough to entitle him to the grant of his claims before this court.*

Thereafter, the learned counsel argued the two issues seriatim.

**ISSUE 1:**

*Whether the Claimant has sufficiently proved his title to the land in dispute, and has established his claim before court entitling him to a declaration of title over the said land, and the grant of his claim on the preponderance of evidence/ balance of probability as required by law?*

Opening her arguments on this first issue, the learned counsel submitted that from the pleadings filed by the 1<sup>st</sup> to the 7<sup>th</sup> Defendants in this suit, the issue of the location of the land is not in dispute.

She said that however, the Claimant took a step further by calling a surveyor (C.W 1) as his first witness and tendered Exhibit “A”, a litigation survey plan.

She said that by Exhibits “E1” and “E2”, which are uncontroverted before the Court, the Defendants participated in an inquisitional trial at the **Private Properties Protection Committee** before this suit was filed, and the 7<sup>th</sup> went on to even receive money over the said Property in dispute.

She urged the Court to hold that by the combined effect of the exhibits, the land in dispute has been identified and is known to all the parties.

She posited that in proof of his claims, the Claimant tendered Exhibits “B”, “C” and “D”. She said that the said documents traced the root of title of the Claimant to show how he came into possession of the land in dispute.

He referred to the case of *MINISTRY OF LAND AND SURVEY, NASARAWA STATE V. NWAFOR & ORS (PP. 38-39 PARAS. E-E) (sic)*.

Learned counsel enumerated the five ways of establishing title to land in Nigeria and relied on the cases of *IDUNDUN V. OKUMAGBA (1976) 9-10 SC 227* and *NKADO & ORS V. OBIANO & ANOR (1997) LPELR-2043(SC)*.

She emphasized that it is trite law that proof of one of the methods will suffice to prove title to land and she relied on the case of *EDEM & ORS V. NSEMO (PP. 18 PARAS. A) (2022) LPELR-56989(CA)*.

She submitted that the burden to prove the acquisition and quiet possession and enjoyment of the land in dispute by the Claimant has been dispensed with by the tendering of Exhibits “B”, “C” and “D”.

She referred to some portions of the Claimant’s Reply to the Statement of Defence of the 1<sup>st</sup> to the 6<sup>th</sup> Defendants where he averred concerning the state of the land and building on it. She urged the Court to accept the pleadings, evidence and exhibits

tendered to show that the Claimant has proved his title to the land in dispute, especially the evidence of his long possession, use and enjoyment of the said property without any contest or challenge by the Defendant over the land.

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

**ISSUE 2:**

***Whether the unchallenged and uncontroverted evidence of the Claimant is enough to entitle him to the grant of his claims before this court.***

Under issue two, learned counsel posited that if issue one is decided in the affirmative, the Court should hold that sufficient notices were given to the Defendants in compliance with the rule of fair hearing and she relied on the case of ***APENA & ANOR VS. AILERU & ANOR. (2014) Vol. 237 LRCN PG. 1 at PG. 6, RATIOS 2.***

She said that the Defendants are aware of the pendency of this suit, and at a point, they took solicitors to defend the suit and participated in the proceedings before they stopped coming. She referred to some of the court processes filed by the counsel to the Defendants.

She said that the Claimant's first witness, the surveyor, was cross-examined by the counsel to the Defendants.

She referred to the decision of the Supreme Court on fair hearing in the case of ***OGUNSANYAN V. THE STATE, 2011, 46 NSCQR, 1083 RATIO 1 AND 4 AT 1085-1086.***

She submitted that the Claimant has complied with the principle of fair hearing as enshrined in the Constitution.

She said that the Defendants deliberately refused to defend this suit and abandoned the suit midway. She cited the case of ***NIGERIAN NAVY & ANOR V. BASSEY (2016) LPELR-41415(CA) (PP. 27-28 PARAS. A).***

She cited the maxim of equity that: ***'equity aids the vigilant and not the indolent'*** and relied on the case of ***DUROJAIYE V. FBN PLC (PP. 22 PARAS. C) (2022) LPELR-58600(CA).***

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

I have carefully considered all the processes filed in this suit, together with the evidence led in the course of the hearing and the address of the learned Counsel for the Claimant.

As I have already observed, the Defendants did not put up any defence to this suit. Thus, the evidence of the Claimant remains unchallenged.

The position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial court, which has a duty to ascribe probative value to it. See the following decisions on the point: *Monkom vs. Odili (2010) 2 NWLR (Pt.1179) 419 at 442; and Kopek Construction Ltd. vs. Ekisola (2010) 3 NWLR (Pt.1182) 618 at 663.*

Furthermore, where the Claimant has adduced admissible evidence which is satisfactory in the context of the case, and none is available from the 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, 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 some relevant documents which were admitted in evidence, namely: The Deed of Transfer between the Claimant and his Vendor (Mr. Frank Adun) which was admitted as a receipt of purchase (Exhibit "B"); another Deed of Transfer between the Claimant's Predecessor in Title (Mr. Frank Adun) and his own Vendor (Mr. Christopher Ologhoyo Okungbowa) (Exhibit "D").

It is clear that Exhibits "B" and "D" are not registered legal instruments so they cannot convey legal title to the land in dispute.

However, it is settled law that a purchaser of land who has paid and taken possession of the land by virtue of a registrable instrument which has not been registered acquires an equitable interest which can only be defeated by a purchaser for value without notice of the prior equity. See the following cases: *Agboola vs. U.B.A. Plc. (2011) 11NWLR (Pt.1258) 375 at 415; Dauda vs. Bamidele (2000) 9 NWLR (Pt.671) 199 at 211; and Goldmark (Nig.) Ltd. vs. Ibafor Co. Ltd. (2012) 10 NWLR (Pt.1308) 291 at 349-350.*

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 Exhibits “B” and “D” *per se* cannot establish legal title to the land in dispute, they 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 Exhibits “B” and “D”, I hold that they 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 since he acquired the land, he has been in peaceful possession of the land ever since without any disturbance from anybody.

He further testified that recently, he started fencing the land before the Defendants came with armed thugs to stop the work, contending that they are the owners of the land and the building.

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* 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 in dispute and is entitled to apply and be granted Statutory Right of Occupancy in respect of the land.

The Claimant is also entitled to a declaration that the Defendants have no right to enter and deprive the Claimant of the right to use the premises as his own.

On the claim for the sum of N2,000,000.00 (Two Million Naira) only as damages against the Defendants 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 Defendants' 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 Defendants.

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 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.

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 and in possession of that piece or parcel of land lying and situate at No. 1, Ologhoyo Street, Ogbe quarters, Benin City measuring 55 feet by 115 feet, together with a bungalow situate on it which he legally purchased and therefore the person entitled to the statutory certificate of occupancy over the land within the jurisdiction of this Honourable Court;*

- 2) *A declaration that the Defendants have no right to enter and deprive the Claimant of the right to use the premises as his own;*
- 3) *The sum of N1,000,000.00 (One Million Naira) damages for trespass and disturbance of the Claimant from the use of the property; and*
- 4) *An order of perpetual injunction restraining the Defendants, their agents, servants, assigns, privies and work men from further trespass and disturbance of the Claimant on the land.*

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

**P.A. AKHIHIERO**  
**JUDGE**  
**20/04/2026**

**COUNSEL:**

*A.E. Oaikhena Esq-----Claimant*

*Unrepresented----- Defendants*