

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. AKHIHERO
ON THURSDAY
THE 23RD DAY OF APRIL, 2026.

BETWEEN:

SUIT NO: B/1015/2023

MR. AUSTIN IGHO-AKITI ----- CLAIMANT
*(Suing by his Lawful Attorney,
Engr. Godwin Nosakhare Eseile)*

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 21st of November 2023 wherein he claimed against the Defendant as follows:

- a. A Declaration that the Claimant has better title to the Parcel of land measuring approximately 100 feet by 100 feet lying and situate at Obazagbon Village, Iyekogba Area, Oredo Local Government Area, Benin City, (more particularly delineated in survey plan No. NSK / ED/ 193 / 2016 prepared by Surveyor Kenneth S. Onosohwo dated 21/04/2016 for the Claimant) which parcel of land was acquired by virtue of a purchase by Claimant from Edo Osarenren Charles,*

and over which land Claimant has been issued a Certificate of Occupancy by the Edo State Government.

- b. Ten Million Naira (N10,000,000.00) as special damages for acts of destruction by the Defendant to the Claimant's blocks, foundation and building materials on the land.*
- c. Five Million Naira (N5,000,000.00) exemplary, aggravated and general damages for acts of trespass on Claimant land by the Defendant.*
- d. An order of perpetual injunction restraining the Defendant, by himself, agents, servants and or privies from further acts of trespass on the Claimant land.*

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, 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's lawful attorney testified that the Claimant became the owner and in possession of the parcel of land measuring approximately 100ft X 100ft in Obazagbon Village, Iyekogba Area, Oredo Local Government Area, Benin City, Edo State, by virtue of a Deed of Transfer made on the 21st day of March, 2016. He testified that the Claimant's predecessor in title, Edo Osarenren Charles came into possession of the land by virtue of an Application for Allocation of Building Plot made through the Obazagbon Village Plot Allocation Committee to the Odionwere of the said Community, which application was accordingly approved. The Deed of Transfer and Application for building plot were collectively admitted in evidence as *Exhibit "B"*.

The Claimant's lawful attorney further testified that upon acquisition of the land, the Claimant engaged Surveyor Kenneth S. Onosohwo to carry out a survey of the land and thereafter applied to the Edo State Geographic Information Service (EDOGIS) for registration of his land and was issued a Certificate of Occupancy (C of O) over the land. He stated that the Claimant fenced the land round and has been in undisturbed possession of the land until the Defendant by himself and persons believed to be his agents, privies and servants broke into the land and are constructing structures on the land. The Certificate of Occupancy registered as No. 181 at Page 1 in Volume 45 of the Certificate of Occupancy Digital Register in the EDOGIS Registry Office of Edo State, dated the 26th day of October, 2021 was admitted in evidence as *Exhibit "C"*.

The Claimant's lawful attorney alleged that the Defendant, his agents, privies and cohorts broke into the Claimant's land and used up the Claimant's sand and building blocks on the land. He stated that the Defendant also destroyed the Claimant's economic crops, on the land.

He alleged that the Defendant and his/her agents and privies are not known to the Claimant despite all efforts to identify them and draw the attention of the Defendant to the subsisting title of the Claimant. He said that the Defendant has been engaged in acts of trespass on the Claimant's land.

The Claimant's lawful attorney also stated that the Defendant is illegally carrying out developmental activities on the land. He however said that on a visit to the land recently it was observed that Defendant has long stopped further work on the Claimant's land.

He further testified that the Claimant carried out due diligence in the course of negotiating for the purchase of the piece/parcel of land. He stated that the members of the Obazagbon Village Area confirmed unequivocally the Claimant's root of title. He emphasized that the Claimant upon purchase deposited trips of sand on the land, bought and deposited building blocks on the land, made a fence around the land and effectively took possession.

Claimant's lawful attorney explained that the Claimant's predecessor in title took him and the Claimant with his privies and agents to the parcel of land and showed them the boundaries. He said that the Claimant took possession by clearing and depositing trips of sand on the land. He claimed that the Claimant was in undisturbed possession since purchase, only for the Defendant to forcefully break into the land.

He further emphasized that the Defendant has no title to the land and does not have a right to the Claimant's land. He stated that despite all entreaties to the community leaders to intervene, the Defendant continued his acts of trespass and destruction of the Claimant's property. He said that the Defendant is unrelenting in the continuing acts of trespass and threats, and only the court can intervene.

The suit was adjourned for cross examination of the Claimant's Lawful Attorney and hearing notices were issued and served on the Defendant, but he did not appear in Court to cross examine the Claimant's lawful attorney. Eventually, the Claimant closed

his case, and the suit was adjourned for defence and fresh hearing notice was served on the Defendant.

On the date slated for defence, the Defendant was again absent, so the Court foreclosed him from defending the suit and the matter was adjourned for final address.

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

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

- i. Whether the Claimant is entitled to the Claim sought in view of the evidence led before court and the failure of defendant to defend this suit; and*
- ii. Whether the Defendant can be deemed to have admitted the claim against him in view of his failure to enter appearance and defend this suit*

Arguing both issues together, the learned counsel submitted that the Claimant's lawful attorney testified in proof of this case and tendered exhibits in proof of the Claims. He urged the Court to believe the evidence of the lawful attorney.

Learned counsel reminded the Court that the Defendant never appeared nor defended this suit despite service of the court processes on him and service of several hearing notices. He urged the Court to hold that the Defendant has no defence to this suit, and to believe the evidence of the Claimant's lawful attorney.

Learned counsel posited that there is nothing before this court controverting the evidence of the Claimant and his witness. He submitted that it is trite law that evidence not controverted, should be believed and acted upon by the Court and he relied on the case of **NWEKA VS. UDOBI (2001) 5 N.W.L.R (PART 706) 445**, where it was held that evidence not challenged is deemed to be true and entitles the Claimant to judgement.

He enumerated the five ways of proving title to land as established in a plethora of cases to be as follows:

- i. By traditional evidence.
- ii. Production of documents of title.

- iii. Acts of person claiming over a length of time.
- iv. Acts of long possession and enjoyment of the land.
- v. Proof of possession of connected or adjacent land.

He cited the case of ***JIWUL VS. DIMLONG (2003) 9 N. W. L. R. (PART 824) PAGE 154.***

Learned counsel stated that the Claimant in his evidence and by the exhibits tendered showed this Court that he acquired the land from one Edo Osarenren Charles, who on his part became seised of the land by virtue of an Approval granted to him over the land by the Odionwere of Obazagbon Village and the Plot Allocation Committee. He reiterated that the Claimant also testified that he paid the consideration and took possession of the land. He urged this court to believe the evidence which has not been challenged or controverted.

Learned counsel submitted that since the Claimant has established his case by evidence, the burden of rebutting the facts rests squarely on the Defendant and he cited ***Section 133 (1) & (2) of the Evidence Act.*** He maintained that the Defendant failed to discharge the burden on him to disprove the evidence adduced by the Claimant in this case and he cited the cases of ***OGUNLEYE VS. ONI (1990) 2 N. W. L. R. PART 135 PAGE 745;***and ***REGISTERED TRUSTEES OF APOSTOLIC CHURCH VS. OLOWOLENI (1990) 6 N. W. L. R. PART 158, PAGE 514.***

He further submitted that where there is a claim for trespass and injunction, title is involved and he cited the case of ***CARRENA V. AKINLASE (2008) 14 NWLR (Part 1107) 262.*** He posited that the Claimant testified that the Defendant trespassed on his land by breaking into the land and used the Claimant's sand and building blocks on the land.

Learned counsel emphasized that the conduct of the Defendant in this suit leaves much to be desired. He reiterated that by order of this Court all processes filed with respect to this suit were duly served on the Defendant by substituted means, yet the Defendant failed to attend Court and defend the suit. He urged this Court to hold that having received all court processes including various Hearing Notices, the failure of the Defendant to appear and defend the suit, is an admission of the claim of the Claimant.

He concluded by urging this Court to hold that the Claimant has proved his Claim and grant all the reliefs sought.

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 *Oyenehin 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 three documents namely: a Deed of Transfer made on the 21st day of March, 2016; Application for Allocation of Building Plot made through the Obazagbon Village Plot Allocation Committee to the Odionwere of the said Community which were collectively admitted in evidence as *Exhibit "B"*; and 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 his title by acts of ownership of the land.

At the hearing, the Claimant's lawful attorney testified that upon purchase, he deposited trips of sand on the land, bought and deposited building blocks on the land, made a fence around the land and effectively took possession. He testified that he also commissioned Surveyor Kenneth S. Onosohwo to carry out a survey of the Claimant's land and the Surveyor produced Survey Plan No. NSK/ED/193/2016.

Therefore, on acts of ownership, the Claimant led unchallenged evidence to prove that since he acquired the land, he 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*.

From the foregoing, I hold that the Claimant is entitled to a declaration that he is the owner of the property in dispute.

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 ₦10,000,000.00 (Ten Million Naira) as special damages for acts of destruction by the Defendant to the Claimant's blocks, foundation and building materials on the land, it is settled law that special damages 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 cannot be granted.

Coming to the claim for general damages, 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.

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's lawful attorney testified of how the Defendant and his agents, privies and cohorts broke into the Claimant's land and used up the Claimant's sand and building blocks on the land. He stated that the Defendant also destroyed the Claimant's economic crops on the land and built structures on it. He 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 has better title to the parcel of land measuring approximately 100 feet by 100 feet lying and situate at Obazagbon Village, Iyekogba Area, Oredo Local Government Area, Benin City, (more particularly delineated in survey plan No. NSK / ED/ 193 / 2016 prepared by Surveyor Kenneth S. Onosohwo dated 21/04/2016 for the Claimant) which parcel of land was acquired by virtue of a purchase by Claimant from Edo Osarenren Charles, and over which land Claimant has been issued a Certificate of Occupancy by the Edo State Government.*
- 2. Two Million Naira (₦2,000,000.00) as general damages for the acts of trespass on the Claimant's land by the Defendant.*
- 3. An order of perpetual injunction restraining the Defendant, by himself, his agents, servants and or privies from further acts of trespass on the Claimant's land.*

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

P.A. AKHIHIRO
JUDGE
23/04/2026

COUNSEL:

Bamidele E. Olowonubi Esq.-----Claimant.

Unrepresented----- Defendant.