

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 THURSDAY
THE 21ST DAY OF MAY 2026.

BETWEEN:

SUIT NO. B/728/2017

MR. PATRICK OKOSODO
(SUING FOR HIMSELF AND ON BEHALF
OF HIS FAMILY)

}-----CLAIMANT

AND

- 1. CHIEF FRANK ERHIMWINEKOMA**
(THE ENOGIE OF AMAGBA)
- 2. MR. OGBEMUDIA ONAGHISE**
- 3. UNKNOWN TRESPASSERS**

}-----DEFENDANTS

JUDGMENT

The Claimant instituted this suit against the Defendants vide a writ of summons dated the 12th of December 2017. However, the Claimant's extant Claim is his 4th Amended Statement of Claim dated 18th of March 2022, filed on the 21st of March 2022 wherein he claimed against the Defendants as follows:

- 1) A DECLARATION that the Claimant is the rightful person entitled to apply and be granted a statutory right of occupancy over all that piece or parcel of land measuring, 1000 feet long by 200 feet wide (One thousand feet long by Two Hundred Feet) lying and situate at Amagba Village, Ward 36A, Oredo**

Local Government Area, Benin City, Edo State covered by an Application for allotment of building plot dated 28th June 1978, thro: the Enogie of Amagba Village No. 1, and his Elders Building Plot Allotment Committee and duly approved by the Enogie and the Elders of Amagba Community on the 4th July 1978 by a Deed of Transfer dated 23rd June 2008 and particularly delineated and verged in property survey plan No. APHED2008 196, dated 23rd August 2008;

- 2) A DECLARATION that the act of the Defendants in entering unto the said land described in paragraph (1) above without the consent, knowledge and authority of the Claimant is illegal trespass and an infringement of the Claimant's right to quiet enjoyment of his land;***
- 3) AN ORDER of perpetual injunction restraining the Defendants, their servants, agents or privies from further trespassing unto the land in dispute or doing anything thereon in the manner inconsistent with the right of the Claimant; and***
- 4) N50,000,000.00 (Fifty Million Naira) being General and Exemplary damages against the Defendants for their unauthorized entry unto the land in dispute, the destruction of the Claimant's fence on the land by the Defendants and the psychological and emotional trauma caused the Claimant by the Defendants.***

The Writ of Summons, Statement of Claim and other accompanying processes were served on the Defendants, and the 1st and 2nd Defendants entered appearance and filed a Joint Amended Statement of Defence, dated 1st of December 2023, and filed on the 7th of December 2023. The 3rd Defendant did not enter any appearance in this suit.

Upon the exchange of pleadings, the Claimant led evidence in proof of his Claims.

At the hearing, the Claimant testified, called one witness, tendered some documentary evidence and closed his case.

The Claimant's case is that he acquired a parcel of land measuring 1000 feet long by 200 feet wide (One Thousand feet long by Two Hundred feet wide) lying and situate at Amagba Village, Ward 36A, Oredo Local Government Area, Via Benin City, Edo State from the Amagba Village/Community, who were represented by the 1st Defendant's late father, the 2nd Defendant and one other Defendant who is now deceased.

He said that he signed a Deed of Transfer, dated 23rd June, 2008 with the Enogie, the Elders and the People of Amagba Village, Ward 36A, Benin City represented by the Enogie Chief C.E.O B Erhimwinekoma (the late father of the 1st Defendant), one Mr. Johnbull Omoma, the 2nd Defendant and he and his children. At the hearing, the Deed of Transfer was tendered and admitted as Exhibit "B".

The Claimant alleged that the said parcel of land is covered by an Application for Allotment of Building Plot dated 28th June 1978, thro: the Enogie of Amagba Village No. 1, and his Elders Building Plot Allotment Committee and duly approved by the Enogie and the Elders of Amagba Community in accordance with the Bini Customary Law. The Application for allotment of building plot was annexed to Exhibit “B”.

The Claimant alleged that immediately after the transfer of ownership rights to him, he engaged the services of a surveyor who surveyed the said parcel of land in his name and that of his children and produced a Survey Plan No. APHED2008196 dated 28th August 2008. At the hearing, the Survey Plan was admitted as Exhibit “C”.

He said that on the 20th of April 2010, he paid the sum of N500,000.00 (Five Hundred Thousand Naira) to some of the Defendants as development fund to enable him to develop his said parcel of land and he was given a receipt titled: "Amagba Community Dev. Fund". At the hearing, the photocopy of the receipt was admitted as Exhibit “D”.

The Claimant alleged that thereafter, he put some trips of sand and granite on the said parcel of land and made a fence on the land to demarcate it.

He said that sometime in the year 2016, when he started seeing one of the Defendants on his parcel of land, carrying out some developments on the land, he engaged the services of a photographer who took some photographs of the buildings presently being developed by the said Defendant on the said parcel of land.

At the hearing, the photographs of some of the buildings presently being developed on the land were tendered and admitted as Exhibits “A1” to “A22”.

The Claimant alleged that he engaged the services of a videographer who did a video coverage of the event of payment of the purchase money for the parcel of land and the signing of the Deed of Transfer dated 23rd June 2008 in the palace of the former Enogie, and in the presence of some of the Defendants. However, he said that the Videographer who did the video coverage has long travelled abroad and all efforts made to locate him proved abortive.

He said that he instituted this suit to stop the alleged acts of trespass by the Defendants.

At the trial, after the Claimant closed his case, the 1st and 2nd Defendants did not lead any evidence in defence of this suit but elected to rest their case on that of the Claimant and his witness CW1.

The 3rd Defendants, who were sued as the "Unknown Trespassers", did not appear to defend the suit in spite of service of several Hearing Notices on them.

Upon the conclusion of evidence, the learned counsel for the Claimant and the 1st and 2nd Defendants filed their final written addresses which they adopted as their final arguments in support of their respective cases.

In his final written address, the learned counsel for the Claimant, *E.E. Ativie Esq.* formulated a sole issue for determination as follows:

“Whether the Claimant has established his case on the balance of probabilities based on unchallenged evidence.”

Arguing the sole issue, the learned counsel submitted that when a Defendant files a Statement of Defence, calls no evidence, and rests his case on that of the Claimant, it has the following legal effect:

- (a) The Defence is treated as abandoned;
- (b) The Claimant's evidence stands largely unchallenged;
- (c) The Court evaluates only the Claimant's evidence;
- (d) Pleadings without evidence carry no weight; and
- (e) Claimant's burden becomes lighter.

Expounding on the first point, learned counsel submitted that in the instant case, the Defence of the 1st and 2nd Defendants is treated as abandoned, because pleadings without evidence carry no weight and he relied on the cases of *Nwabuoku v. Ottih (1961)2 SCNLR 232* and *Brawal Shipping (Nig) Ltd. V. Onwadike Co. Ltd (2000) 11 NWLT (Pt. 678)387*.

He submitted that by the provisions of *sections 131-133 of the Evidence Act, 2011*, in civil cases, the burden of proof lies on the person who would fail, assuming no evidence was given on the other side. Furthermore, he said that in respect of particular facts, the burden rests on the party against whom judgment would be given, if no evidence was adduced in respect of those facts. He said that civil cases are decided on the balance of probabilities and he cited the case of *Kupalati v. MTN (Nig) Comm. Ltd. (2016) ALL FWLR (Pt. 847) Pg. 465 @Pg. 496 Paras D-E*.

Counsel submitted that in the instant case, the Claimant has successfully discharged the burden of proof required of him by law to entitle him to the reliefs sought against the Defendants, since the Defendants did not adduce any evidence in their defence.

He referred to the oral and documentary evidence adduced by the Claimant at the hearing and submitted that the Claimant has discharged the burden of proof on him through credible, admissible and unchallenged evidence.

He maintained that it is settled law that where evidence adduced by a party is neither challenged under cross-examination, nor contradicted by the adverse party, such evidence is deemed admitted, and the Court is entitled to rely on it and he relied on the case of *Omoregbe v. Lawani (1980)3-4 SC 108*.

Again, learned counsel relied on the case of *Odulaja v. Haddad (1973)11 SC 35*, where the Apex Court held that failure to cross-examine a witness on a material point amounts to acceptance of the truth of that evidence. He said that the 1st and 2nd Defendants did not cross-examine the Claimant on his Application for Allotment of Building Plot given to him by the Enogie, Elders and Members of Amagba Village, which stands as the standard of acquisition of building plot in Amagba, being dully signed/approved by the Enogie of Amagba Village.

He maintained that the Defendants' silence in the face of the Claimant's evidence amounts to a tacit admission, having found same to be credible and admissible. He submitted that the Claimant has proved his case on the balance of probabilities and is therefore entitled to judgment.

He urged the Court to accept the evidence adduced by the Claimant and rely on it as sufficient proof of the Claimant's Claim before this Honourable Court. He referred the Court to the case of *Kopek Construction Ltd. V. Ekisola (2009) ALL FWLR (Pt. 519) Pg. 1035 @ PP. 1077, Paras D-E* where the Supreme Court held inter alia as follows:

"... where evidence before a trial Court is unchallenged, it is the duty of that Court to accept, and act on it as it constitutes sufficient prove of a party's Claim in proper cases".

On the claim of general and exemplary damages against the Defendants, counsel submitted that the Claimant is entitled to the award of same, for the pain and stress that he suffered as a result of the wrongful acts of the Defendants. He relied on the case of *MTN (NIG) Comm. Ltd. V. Aluko (2014) ALL FWLR (Pt. 732) Pg. 1701 @Pg. 1736-1737, Paras F-H*.

In his final written address, the learned counsel for the 1st and 2nd Defendants, *W.A. Isuku Esq.* formulated a sole issue for determination as follows:

"Whether the Claimant has established his case on the preponderance of evidence to entitle him to the various reliefs he is seeking in this case?"

Arguing the sole issue, learned counsel submitted that from the oral and documentary evidence adduced by the Claimant in this case, the Claimant has failed to prove his case on the preponderance of evidence to entitle him to the reliefs he is seeking in this suit.

He referred to the case of ***AREGBESOLA VS. OYINLOLA (2011) 1 W.R.N. Page 33 Particularly at Page 137*** where the Court of Appeal held that a Court does not grant a declaration on admission of parties because the Court must be satisfied that the Plaintiff on his own evidence is entitled to the relief claimed.

He also relied on the cases of ***THOMAS NRUAMAH & 4 ORS. VS. REUBEN EBUZOEME & 9 ORS. (2013) 221 L.R.C.N (Pt. 1) Page 221 particularly at Page 242 paragraph P – U*** and ***TUKURU VS. SABI (2013) 222 L.R.C.N. (Pt. 1) Page 65 at 84 paragraph JJ – A.***

Counsel posited that where the Defendants do not have a Counterclaim as in the instant case, the burden is heavier on the Claimant to prove his title to the land in dispute, and he once again relied on the case of ***THOMAS NRUAMAH & 4 ORS. VS. REUBEN EBUZOEME & 9 ORS. (supra) Page 242 paragraph 2 – EE.***

He said that the Claimant in paragraph 12 of his adopted Written Statement on Oath stated that he acquired the land in dispute via an application for allotment of building plot through the Enogie of Amagba to the Oba of Benin, Oba Akenzua II, CMG in 1978 which said application was frontloaded along the Claimant's Originating Processes.

He said that the Claimant stated that he would rely on the said document at the trial of the case, and he alleged that the said document was never tendered and admitted as Exhibit. He said that since the said Approval was not specifically tendered and admitted, it is not the duty of this Honourable Court to embark on a voyage of speculation in order to know or ascertain whether the land in dispute was granted to the Claimant by the Oba of Benin. He relied on the following cases: ***OGBONNA VS. OGBUJI (2014) 6 N.W.L.R (Pt. 1403) Page 205 particularly at page 227 paragraph B – C; NATIONAL ELECTORAL COMMISSION VS ADAMS ALIYU OSHIOMHOLE (2009) 4 N.W.L.R (Part 1132) Page 607 particularly at Page 665; KEKONG VS. THE STATE (2017) 273 L.R.C.N; and Page 141 particularly at Pages 168 – 169, Paragraph JJ – A.***

Furthermore, counsel contended that assuming but not conceding that the said Oba's Approval was admitted in evidence, the Court cannot rely on it because the Claimant is basing his root of title to a grant from the Oba of Benin through the Enogie of Amagba Village and Elders, Building Plot Allotment Committee, Ward 36A, Amagba, Benin City. He said that in other words, the land in question is within Benin Kingdom.

He said that in the case of *OWIE VS. IGHIWI (2005) 5 N.W.L.R. (Pt. 917) at Page 184*, the Supreme Court outlined the procedure for acquisition of land under Benin Customary Law as follows:

“(a)The Oba of Benin is the only authority competent under Bini Customary Law to make an allocation or a grant of Bini lands in or outside Benin City. Under the law, all Bini lands are communal property of the entire Bini people and the legal estate in such lands is vested and resides in the Oba as trustee for the Benin people.

(b)Application for a piece of land is usually, made to the appropriate Plot Allotment Committee having jurisdiction over the land.

(c)Recommendation of the application is then made by the relevant Plot Allotment Committee to the Oba of Benin.

(d)The endorsement of the Oba of his approval on the grantee’s written application, duly recommended by the relevant and appropriate Plot Allotment Committee immediately transfers to the purchaser or grantee of the plot of land involved.

(e)An approval once given remains valid until set aside by the Oba of Benin when evidence is subsequently produced of a prior approval for the same land, the second approval being bonafide and in ignorance of the existence of the earlier one.

(f)It is contrary to Bini Customary Law to unilaterally set aside an earlier. Therefore to set aside an approval which is admittedly made in error, the two parties affected by the conflicting grants must be present before the Oba at the same time and his decision must be communicated to them after an open hearing at the Oba’s palace. Such decision must also be communicated from which the two conflicting recommendations had emanated.”

He also referred to the cases of *ARASE VS ARASE (1981) 5 SC Page 30 at 33 – 34* and *K.S. OKEAYA VS EKIOMADO AGUEBOR (1970) ALL N.L.R. Page 1 at Pages 8 – 9* which he said are equally instructive on the point.

Furthermore, learned counsel submitted that in the case of *UDIH VS. IDEMUDIA (1998) 56/57 L.R.C.N. 3184*, the Supreme Court held that it is an essential requirement of Benin Customary Law that for a person to acquire a legal estate in any given Benin Communal Land, he must show that his application was recommended to the Oba for approval by the appropriate Ward Plot Allotment Committee having jurisdiction over the area in which the land is situate and such acquisition or transfer is effected on the endorsement by the Oba, of his approval on the purchaser’s application duly recommended by the appropriate Plot Allotment Committee. He said that any land not acquired in strict compliance with the aforesaid procedure is void and of no legal effect.

He submitted that since the Claimant's root of title (Oba's Approval) is incurably defective, the Claimant's case is bound to collapse. He said that you cannot put something on nothing and expect it to stand and he relied on the cases of **CHIEF OLUWASEGUN OGUNLANA & ORS. VS. TALEMU FASANYA & ORS. LPELR (2019) CA/L/110/2016** and **Macfoy vs UAC (1962) 1 AC 100**.

He maintained that the said Oba's Approval, which however was not tendered and admitted as Exhibit before this Honourable Court was not signed by the Oba to whom the Application was addressed. He said that the signature of the Oba is mandatory and indispensable to enable the document to be valid and competent and he relied on the case of **OMEGA BANK NIG. PLC VS OBC LTD. (2005) 123 LRCN Page 34 at Page 66, Paragraph A – F** where the Apex Court held that: "A document which is not signed does not have any efficacy in law."

In conclusion, he urged the Court to dismiss the Claimant's case in its entirety for having failed to prove his case on the preponderance of evidence to entitle him to the reliefs he seeks in this suit.

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

As I have already observed, although the 1st and 2nd Defendants filed their Joint Statement of Defence, at the hearing they did not lead any evidence in proof of their pleadings. Furthermore, the 3rd Defendant completely abandoned the trial.

It is settled law that any averment of facts in a pleading which is not supported by evidence is deemed abandoned and must be discountenanced. See the case of **Mobil Produce (Nig.) Ltd. v. Umenweke (2002) 9 NWLR (Pt. 773) 541 CA**. In other words, averments in pleadings do not amount to evidence. See the following cases: **Raimi Olarewaju v. Amos Bamigboye & ors. (1987) 3 NWLR (Pt.60) 313, 359, 362; and Eseigbe v. Agholor & anor. (1993) 9 NWLR (Pt.316) 128 ;(1993) 12 SCNJ 82; and ODUWOLE & ORS V. WEST (2010) LPELR-2263(SC) (PP. 26-27 PARAS. E)**.

In this suit, the 1st and 2nd Defendants filed a Joint Statement of Defence but at the hearing, no evidence was led in support of any the averments in the pleadings. The effect of this is that the Joint Statement of Defence is deemed abandoned since no evidence was led in support of same. See the cases of **OLOKUNLADE V. SAMUEL (2013) ALL FWLR Pt. 669 Pg. 1152 RATIO 5; OLUSANYA V. OSINLEYE (2013) 9 SCM Pg. 189; and EYIGEBE V. IYAJI (2013) 12 SCM PG. 75**.

The implication of the abandoned Statement of Defence is that whatever averments that are contained in the Claimant's Statement of Claim are deemed admitted by the Defendants and admitted fact needs no further proof. See the cases of *ANDONY V. AYI II (2004) ALL FWLR Pt. 227 Pg. 444*, *ASIKPO V. GEORGE (2013) ALL FWLR Pt. 690 PG. 1428 RATIO 2*; and *ADEGBESAN & ANOR V. ILESANMI (2017) LPELR-42552(CA) (PP. 82-83 PARAS. D-D)*.

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 Defendants, the burden on the Claimant is lighter as the case will be decided upon a minimum of proof. See: *Adeleke vs. Iyanda (2001) 13 NWLR (Pt.729) 1at 23-24*.

However, notwithstanding the fact that the suit is undefended, the Court would only be bound by unchallenged and uncontroverted evidence of the Claimant if it is cogent and credible. See: *Arewa Textiles Plc. vs. Finetex Ltd. (2003) 7 NWLR (Pt.819) 322 at 341*.

Even where the evidence is unchallenged, the trial court still has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim. See: *Gonzee (Nig.) Ltd. vs. Nigerian Educational Research and Development Council (2005) 13 NWLR (Pt.943) 634 at 650*.

Applying the foregoing principles, I will evaluate the evidence adduced by the Claimant to ascertain whether they are credible and sufficient to sustain the Claim.

I am of the view that the sole Issue for Determination in this suit is: ***whether the Claimant is entitled to the reliefs claimed in this suit.***

In a claim for a declaration of title to land, the burden is on the Claimant to satisfy the Court that he is entitled, on the evidence adduced by him, to the declaration which he seeks. The Claimant must rely on the strength of his own case and not on the weakness of the Defendant's case. See: *Ojo vs. Azam (2001) 4 NWLR (Pt.702) 57 at 71*; and *Oyeneyin vs. Akinkugbe (2010) 4 NWLR (Pt.1184) 265 at 295*.

It is now settled law that the five ways of proving ownership of land are as follow:

- 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: *Idundun vs. Okumagba (1976) 9-10 S.C. 227.*

The point must be made that any one of the five means will be sufficient to prove title to the land as each is independent of the other. See: *Nwosu vs. Udeaja (1990) 1 NWLR (Pt.125) 188; and Anabaronye & Ors. vs. Nwakaihe (1997) 1 NWLR (Pt.482) 374 at 385.*

In the instant suit, from the tenor of his evidence the Claimant appears to be relying on the second, third and fifth means of proof, to wit: proof by the production of documents of title, by acts of ownership and acts of long possession and enjoyment of the land.

On the proof by the production of title documents, the Claimant tendered a Deed of Transfer dated 23rd June, 2008 between the Enogie, the Elders and the People of Amagba Village, Ward 36A, Benin City represented by the Enogie Chief C.E.O B Erhimwinekoma (the late father of the 1st Defendant), one Johnbull Omoma (now deceased), the 2nd Defendant and the Claimant and his children. At the hearing, the Deed of Transfer was tendered and admitted as Exhibit "B". An Application for allotment of building plot dated 28th June 1978, thro: the Enogie of Amagba Village No. 1, and his Elders Building Plot Allotment Committee and duly approved by the Enogie and the Elders of Amagba Community in accordance with the Bini Customary Law was annexed to Exhibit "B".

In this suit, the Claimant's main documents of title appear to be Exhibit "B" with the annexed Application for Allotment of Building Plot.

In his written address, the learned counsel for the 1st and 2nd Defendant seriously contended that that the Claimant did not tender the Application for Allotment of Building Plot which he frontloaded along with his Originating Processes. Clearly, that submission was in error, because the said Application was tendered as an annexure to the Deed of Transfer, Exhibit "B". I presume this was an oversight on the part of the learned counsel.

In his arguments, the learned counsel also contended that even if the Application was tendered and admitted in evidence, the Court cannot rely on it because the Claimant is basing his root of title to a grant from the Oba of Benin through the Enogie of Amagba Village and Elders, Building Plot Allotment Committee, Ward 36A, Amagba, Benin City. Furthermore, he maintained that the land in dispute is within Benin Kingdom.

That in the case of *OWIE VS. IGHIWI (2005) 5 N.W.L.R. (Pt. 917) at Page 184*, the Supreme Court outlined the procedure for acquisition of land under Benin Customary Law. He said that the Application for Allotment was not approved by the Oba of Benin.

It is pertinent to note that going through the entire gamut of the Claimant's extant pleadings and his deposition, the Claimant did not state that he derived his root of title from any Oba's Approval as alleged by the learned counsel.

For the avoidance of doubt, at paragraph 11, the Claimant averred thus:

“11. The Claimant avers that the said parcel of land is covered by an application which is the Application for allotment of building plot dated 28th June 1978 thro: the Enogie of Amagba Village No.1, and his Elders, Building Plot Allotment Committee, Ward 36A, Amagba, Benin City and duly approved on the 4th July 1978 by the Enogie of Amagba Village No. 1, and His Elders of Amagba Building Plot Allotment Committee, Ward 36A, Amagba, Benin City in accordance with the Bini Customary Law, the document was given to the Claimant by the 1st and 2nd Defendants. A copy of the Application for allotment of building plot dated 28th June 1978 and approved by the Enogie of Amagba and his Elders Amagba Community on the 4th of July 1978 is herein pleaded and shall be relied upon at the trial.”
(Underlining, mine).

From the above, it is evident that the Claimant's case is that his root of title was derived from the approval on the 4th of July 1978 by the Enogie of Amagba Village No. 1, and His Elders of Amagba Building Plot Allotment Committee, Ward 36A, Amagba, Benin City in accordance with the Bini Customary Law. Since the 1st and 2nd Defendants did not lead any evidence to contradict this fact, they are deemed to have admitted it and facts admitted need no further proof. See the cases of *MOHAMMED V. APC & ORS (2019) LPELR-48395(CA) (PP. 36 PARAS. E-E)*; and *ANIKA V. DIAMOND BANK PLC (2014) LPELR-23981(CA) (PP. 16 PARAS. C-C)*.

From the foregoing, I hold that in the absence of any valid challenge to the Approval for Building Plot annexed to Exhibit “B” it will suffice to substantiate the Claimant's root of title.

Coming to Exhibit “B”, the Deed of Transfer, it is evident that it is not a registered legal instrument so it cannot convey legal title to the land.

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

Goldmark (Nig.) Ltd. vs. Ibafo Co. Ltd. (2012) 10 NWLR (Pt.1308) 291 at 349-350.g

In the recent case of: ***Atanda vs. Commissioner for Lands and Housing, Kwara State & Anor. (2018) 1 NWLR (Pt.1599) 32 at 55, Sanusi JSC***, delivering the lead judgment of the Supreme Court restated the position thus:

“A registrable instrument which has not been registered is also admissible only to establish or prove equitable interest or to prove payment of purchase price.”

Flowing from the foregoing, I am of the view that although Exhibit “B”, *per se* cannot establish legal title to the land in dispute, it will suffice to vest an equitable interest on the Claimant, which can only be defeated by a purchaser for value without notice of the prior equity. In this suit, none of the Defendants is a purchaser for value without notice of the prior equity.

In the absence of any challenge to Exhibit “B”, I hold that it will also suffice to establish the Claimant’s equitable title to the land in dispute.

On acts of ownership and possession, the Claimant led unchallenged evidence to prove that immediately after the purchase of the land; he took possession of the land and engaged the services of a surveyor who surveyed the said parcel of land in his name and that of his children and produced a Survey Plan No. APHED2008196 dated 28th August, 2008. At the hearing, the Survey Plan was admitted as Exhibit “C”.

He said that on the 20th of April, 2010, he paid the sum of N500,000.00 (Five Hundred Thousand Naira) to some of the Defendants as development fund to enable him develop his said parcel of land and he was given a receipt titled "Amagba Community Dev. Fund". At the hearing, the photocopy of the receipt was admitted as Exhibit “D”.

The Claimant also testified that thereafter he put some trips of sand and granite on the said parcel of land and made a fence on the land to demarcate it.

All this evidence of the possession and development of the land was not contradicted by any of the Defendants.

From the uncontroverted evidence of the Claimant, this evidence of carrying out some developments on the land amount 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*** 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 of title in this suit.

At this stage, it is pertinent to observe that although the Claimant testified that some persons trespassed on his land by erecting some illegal structures on his land, in his evidence before this Court, he did not identify any of the actual trespassers.

Although the Defendants did not lead any evidence in defence of this suit, it must be noted that at the hearing, the learned counsel for the 1st and 2nd Defendant cross examined the Claimant and his sole witness during the hearing. It is a trite principle of law that a party such as the 1st and 2nd Defendants can rely on the evidence elicited from the witnesses of the other party such as the Claimant where such evidence supports their case. In the case of *ONISAODU ANOR v ELEWUJU ANOR (2006) LPELR-2687(SC)*, the Supreme Court, per *Muhktar, JSC* expounded thus:

"...when the evidence of a witness supports the case of the opponent against whom he purports to give evidence, that opponent can take advantage of that evidence to strengthen his case, if it is consistent with, and corroborates his case, as in this case."

In the instant case under cross examination, the C.W. 1 stated thus: ***"I was not given any document to show that the 1st and 2nd Defendants erected structures on the land in dispute. What I wrote in my deposition is what the Claimant told me and what I observed."***

Furthermore, under cross examination, the Claimant himself stated as follows: ***"when I saw the structures on my land I made enquires but I was not told the person(s) who built on my land. My father-in-law and my mother-in-law made the transactions for the land on my behalf and when I came back to the country, I signed the Deed of Transfer."***

My in-law commenced the licensed surveyor to survey the land for me. My father-in-law is late while my mother-in-law is still alive. My mother-in-law tried her best to secure the land for me, she was over stressed and she is now old that is why I did not bring her to testify on my behalf."

From the above evidence elicited under cross examination, it is apparent that although some people trespassed on the Claimant's land, the Claimant is not aware of the actual person(s) who trespassed on his land.

From the foregoing, I hold that the 1st and 2nd Defendants who are known persons cannot be held liable for the alleged trespass on the Claimant's land. It is only the 3rd Defendants who were sued as "Unknown Trespassers" that can be held liable in trespass.

In the event, I hold that only the 3rd Defendant is liable for trespass.

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 3rd Defendants, their Agents, privies or servants from any further acts of trespass on the Claimant's land.

On the relief of N50,000,000.00 (Fifty Million Naira) being General and exemplary damages against the Defendants for their unauthorized entry unto the land in dispute, 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.

From the unchallenged evidence of the Claimant, since trespass has been established, the Claimant is entitled to some reasonable compensation to cover some of the expenses which he has suffered as a result of the 3rd Defendants' acts of trespass culminating in the prosecution of this suit. In the instant case, I will exercise my discretion to award a reasonable sum as general damages to compensate the Claimant for these expenses.

Sequel to the foregoing, the sole issue for determination is partly resolved in favour of the Claimant. The Claims partly succeed and judgment is entered in favour of the Claimant as follows:

- 1) ***A DECLARATION that the Claimant is the rightful person entitled to apply and be granted a statutory right of occupancy over all that piece or parcel of land measuring, 1000 feet long by 200 feet wide (One Thousand feet by Two Hundred Feet) lying and situate at Amagba Village, Ward 36A, Oredo Local Government Area, Benin City, Edo State covered by an Application for Allotment of Building Plot dated 28th June 1978, through: the Enogie of Amagba Village No. 1, and his Elders Building Plot Allotment Committee and duly approved by the Enogie and the Elders of Amagba Community on the 4th July 1978 by a Deed of Transfer dated 23rd June 2008 and particularly***

delineated and verged in property survey plan No. APHED2008 196, dated 23rd August 2008;

- 2) A DECLARATION that the act of the 3rd Defendants in entering unto the said land described in paragraph (1) above without the consent, knowledge and authority of the Claimant is illegal trespass and an infringement of the Claimant's right to quiet enjoyment of his land;*
- 3) AN ORDER of perpetual injunction restraining the 3rd Defendants, their servants, agents or privies from further trespassing unto the land in dispute or doing anything thereon in the manner inconsistent with the right of the Claimant; and*
- 4) N3,000,000.00 (Three Million Naira) being General and Exemplary damages against the 3rd Defendants for their unauthorized entry unto the land in dispute, the destruction of the Claimant's fence on the land by the 3rd Defendants and the psychological and emotional trauma caused the Claimant by the 3rd Defendants.*

The sum of N200, 000.00 (Two Hundred Thousand Naira) costs is awarded in favour of the Claimant against the 3rd Defendants.

P.A. AKHIHIERO
JUDGE
21 /05/2026

COUNSEL:

E.E. Ativie Esq.-----Claimant.

W.A. Isuku Esq-----1st & 2nd Defendants.

Unrepresented-----3rd Defendant.