

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 TUESDAY
THE 19TH DAY OF JULY, 2022.

BETWEEN: **SUIT NO. B/173/2021**
DR. PETER I. OZO-ESON **CLAIMANT**
AND
MR. JOHN ETINOSA EKUASE **DEFENDANT**

JUDGMENT

The Claimant instituted this suit against the Defendant vide a writ of summons dated the 18th of March, 2021 claiming as follows:

- (a) *A declaration that the Claimant is the owner and person entitled to statutory right of all that parcel of land measuring 100 feet by 100 feet gcovering an area of approximately 950.464 square meters lying and situate at Okhuoromi Village and covered by property survey Plan No. MEA/ED/666/2018 dated the 27th of November, 2018.*
- (b) *An order of perpetual injunction restraining the Defendant, his agents, servant and/or privies from further trespassing on the land aforementioned.*

(c) N20, 000,000.00 (Twenty Million Naira) as general damages for trespass.

The Writ of Summons, Statement of Claim and other accompanying processes were served on the Defendant but he failed to attend the Court so the hearing commenced without him.

At the hearing, the Claimant testified that he is the owner of a parcel of land measuring 100 feet by 100 feet situate and lying at Okhuoromi Village, known as Ward 36 A, now Ward 2, Benin City covered by Property Survey Plan No. MEA/ED/666/2018 dated 27th November, 2018. He said that he acquired the land by a Deed of Transfer dated 29th day of October, 2018. That upon acquiring the aforementioned parcel of land from his predecessor-in-title, he took possession and commissioned a registered Surveyor to survey the part of the land which he purchased. The Deed of Transfer was admitted as Exhibit A at the trial while the Survey Plan was admitted as Exhibit B.

He stated that the said parcel of land was part of the larger parcel of land granted to one Mr. Stephen I. Osagie his predecessor – in – title who is a native and prominent member of the Okhuoromi Community, vide an Application for Allotment of Building Plot made through the Elders/Plot Allotment Committee, Okhuoromi Village which said application was duly approved on the 12th of March, 2018.

He stated that the Okhuoromi Community land was de-reserved for the Community by the Edo State Government several years ago.

He maintained that before the grant of the land to his predecessor –in – title, he was taken to the land by the Community Pointers on the instruction of the said Elders/Plot Allotment Committee, was shown the entire land measuring 100 feet by 200 feet and they reported back to the said Plot Allotment Committee who upon been satisfied that the land was free, allocated it to his predecessor – in – title.

He said that his predecessor-in title was put in possession of the entire land without any disturbance from anybody and he demarcated the land by a wall fence. He alleged that before the allocation of the land to his predecessor-in-title, the Egberi Community had laid claim to the parcel of land along with other lands during their boundary dispute with the Okhuoromi Community. He said that the said boundary dispute was eventually resolved by the palace of the Oba of Benin ceding the land including the one now in dispute to the Okhuoromi Community. He alleged that before

the said boundary resolution, the Egbiri Community had put a fence across the land now in dispute.

The Claimant stated that after taking possession of the land, he erected an iron gate on the land without let or hindrance. He said that he also commenced the process of obtaining a Certificate of Occupancy from the Edo State Government through the Edo State Geographic Information Service.

He said that when he went on a routine check on the land in late January, 2021, he discovered that the Defendant had broken into his land by pulling down the iron-gate and destroying part of the fence. He tendered some photographs showing the damages and destruction of the gate and fence and they were admitted as Exhibits C and C1.

He alleged that on meeting with the Defendant, he disclosed that he was been relocated to his parcel of land by someone else who sold a parcel of land to him. That in spite of his warning, the Defendant continued to lay foundation on his land without his consent and authority, hence he instituted this suit against the Defendant.

Upon the conclusion of the Claimant's evidence, the matter was adjourned for cross examination and the Court ordered that fresh hearing notice should be issued and served on the Defendant. The Hearing notice was served on him but he failed to appear in the Court so the Court foreclosed him and the suit was adjourned for Defence. The Defendant never showed up in Court to defend the suit so the matter was adjourned for final address.

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

“Whether from the circumstance of this case, the Claimant is not entitled to his reliefs claimed?”

Thereafter the learned counsel articulated his arguments on the sole issue for determination.

He submitted that from the pleadings and evidence led, the Claimant has proved his case and is entitled to the reliefs claimed. He maintained that it is settled law that where evidence is unchallenged or un-contradicted the onus of proof on the claimant is satisfied on minimal proof. See ***MOBIL OIL (NIGERIA) LTD V. NATIONAL OIL & CHEMICAL MARKETING CO. LTD (2009) 9 NWLR (PT.671) P.44.***

He posited that by paragraphs 3 to 18 of the Claimant's witness written statement , the Claimant explained how he became the owner of the parcel of land measuring 100feet by 100feet situate at Okhuoromi Village, then known as Ward 36A, now Ward 2, Benin City and covered by Property Survey Plan No. MEA/ED/666/2018 dated 27th day of November, 2018 which said Property Survey Plan is in the name of the Claimant. He referred to exhibits "A" and "B" which are the Deed of Transfer evidencing the purchase of the land by the Claimant from the original owner and the Property Survey Plan covering the land respectively.

He said that in paragraphs 19 to 24 of the said Claimant's Written Statement on Oath, the Claimant demonstrated clearly the acts of trespass of the Defendant on the said land and he referred to exhibits C and C1 to buttress his point. He said that in spite of the cogent and credible evidence of the Claimant in proof of his case, the Defendant refused and/or neglected to challenge or rebut the evidence. He submitted that where a party fails to utilize the opportunity to present his case, he cannot later be heard to complain of lack of fair hearing and he relied on the case of *CHAMI V. UBA PLC (2010) 6 NWLR (PT.1191) P. 474 at 497, paragraph E.*

He submitted that the Claimant's evidence is un-challenged and he referred to the case of *MOBIL OIL (NIGERIA) LTD V. NATIONAL OIL & CHEMICAL MARKETING CO. LTD (supra)*, where the court held that where evidence is unchallenged or un-contradicted, the onus of proof is satisfied on minimal proof, since there is nothing on the other side of the scale. He also relied on the case of *ADELEKE V. IYANDA (2001) 13 NWLR (PT. 729) P.1 at pages 22-23, paras A-C.*

He urged the Court to hold that the evidence of the Claimant is cogent and credible and thus entitled to his reliefs.

He further submitted that in view of the fact that the Defendant trespassed on the Claimant's said parcel of land, the Claimant is entitled to damages against the Defendant for his acts of trespass and he urged the Court to grant all the Claimant's reliefs 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, 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 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:

- I. *By traditional evidence;*
- II. *By the production of documents of title;*
- III. *By proving acts of ownership;*

- IV. *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*
- V. *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 and third means of proof, to wit: proof by the production of documents of title and by acts of ownership.

On the proof by the production of title documents, the Claimant tendered his Deed of Transfer which was admitted as Exhibit A at the trial while the Survey Plan was admitted as Exhibit B. The Claimant's main document of title is the Deed of Transfer. It is evident that Exhibit A 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. Ibafor 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 A, *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 the absence of any challenge to Exhibit A, I hold that it 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 immediately after the purchase of the land, he took possession of the land and erected an iron gate on the land without let or hindrance. He said that he also commenced the process of obtaining a Certificate of Occupancy from the Edo State Government through the Edo State Geographic Information Service.

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.***

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.

On the claim for the sum of N20,000, 000:00 (Twenty Million Naira) as 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.***

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.

In the instant case, the Claimant gave evidence of how when he went on a routine check on the land in late January, 2021, he discovered that the Defendant had broken into his land by pulling down the iron-gate and destroying part of the fence. He tendered some photographs showing the damages and destruction of the gate and fence and they were admitted as Exhibits C and C1.

However, the Claimant did not elaborate on the extent of destruction or losses occasioned by the Defendant's trespass. For example, we do not know the monetary value of the gate that was destroyed by the Defendant. Going through the entire gamut of the Claimant's evidence, there is no evidence of the quantum of damages suffered from the action of the Defendant.

Generally the trial court has discretion as to the quantum of damages it would award in a claim of damages for trespass. The assessment does not depend on any legal rules- but the discretion of court is however limited by usual caution or prudence and remoteness of damage when considering its award of damages. 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)*.

I have already found in this judgment that the Claimant has established a better title to the land in dispute and ascribed lawful possession to him. The law is well settled that trespass is actionable per se. This means the entitlement for damages for trespass is not hinged on proof of actual or any damage by the Claimant. See: *CHUKWUMA V IFELOYE (2008) 18 NWLR PT. 1118, 204*; and *REGISTERED TRUSTEES OF MASTER'S VESSEL MINISTRIES (NIG) INCORP V EMENIKE & ORS (2017) LPELR - 42836(CA)*. For trespass however the quantum is usually nominal. The rationale for this is predicated on the fact that a Claimant is entitled to damages for trespass even if no damages or loss is caused to him and if any damage or loss is caused to him as a consequence of the trespass; same is recoverable under special damages properly pleaded and proved. See *AKAOLISA V AKAOLISA (2014) LPELR - 24148 (CA)*; and *OSUJI VISIOCHA (1989) 3 NWLR PT 111, 623 AT 634*.

In the instant case, the Claimant did not claim special damages neither did he plead or prove special damages. In the event 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. 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:

- (a) A declaration that the Claimant is the owner and person entitled to statutory right of ALL THAT parcel of land measuring 100 feet by 100 feet covering an area of approximately 950.464 square meters lying and situate at Okhuoromi Village and covered by property survey Plan No. MEA/ED/666/2018 dated the 27th of November, 2018;*
- (b) An order of perpetual injunction restraining the Defendant, his agents, servant and/or privies from further trespassing on the land aforementioned; and*
- (c) N2, 000,000.00 (Two Million Naira) as general damages for trespass.*

P.A.AKHIHIERO JUDGE

19 /07/2022

COUNSEL:

Idemudia Ilueminosen Esq. -----Claimant.

Unrepresented-----Defendant.

