

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 18TH DAY OF OCTOBER, 2022.

BETWEEN:

SUIT NO. B/347/2021

MR. CHRISTOPHER AKIM BASKY OLUMESE -----CLAIMANT

(Suing by his Lawful Attorney

MR GODSWILL ASIAN)

AND

- 1. MR. PETER ERIMWINROSE**
- 2. MR. AGHASOMWAN UWUIGBE**
*(For themselves and on behalf of the
People of Amagba Community)*

} **DEFENDANTS**

JUDGMENT

The Claimant instituted this suit vide a writ of summons dated and filed on the 26th of April, 2021. However, the extant pleadings of the Claimant is the amended statement of claim filed on the 26/11/2021. By the said amended statement of claim, the Claimant is claiming against the Defendants as follows:

- A. A Declaration that by virtue of a certificate of occupancy number 7f7a1 issued by the Governor of Edo State, Godwin Nogheghase Obaseki on 5th October, 2020 registered as No. 115 at page 1 in volume 23 of the certificate of occupancy Digital Register in the EDOGIS Registry office of Edo State at ten O'clock in the morning of 5th November, 2020 by the Chief Registrar of Titles and Instruments, consequent upon a Deed of Conveyance acknowledging receipt of payment of valuable consideration executed in his favour on 28th**

April, 2017 by his predecessor in interest, Ernest Akpomedaye, who in turn acquired interest from one Mr. Monday Ehigie via an agreement also acknowledging receipt of valuable consideration dated 21st December, 2014, which Monday Ehigie in turn acquired his interest over the parcel of land measuring 100ft by 200ft from Amagba Community via an approval for allocation of building plot dated 10th October, 2009, the Claimant is the owner and the person entitled to exclusive possession of all that parcel of land measuring 100ft by 200ft over which a grant of a statutory right of occupancy has been made in his favour by the government of Edo state represented in the certificate of occupancy as 1,641.50 square metres in Amagba, Oredo Local Government Area of Edo State.

- B. A Declaration that the brazen act of the Defendants in recently entering into a portion of the said parcel of land, destroying his fence and erecting another fence to cut off a part of the land as shown in the litigation survey plan, without the consent and authority of the claimant amounts to trespass and it is actionable per se.*
- C. An Order of Perpetual injunction restraining the Defendants from ever entering into the said land mentioned in paragraphs A and B above measuring 100ft by 200ft situate at Amagba Community Ward 36A, Oredo Local Government Area which location is particularly now described in the Certificate of Occupancy number Plot No 7f7a1 contained in file No. EDL. 55717 as well shown in the litigation Survey Plan No. SEA/ED/D.236/2021, as well as restrain the Defendant, his or her agents, servants or privies from possessing the said land or carrying out any building construction or any trespassory activities whatsoever thereon.*
- D. An order granting the Claimant exclusive possession over the said 100ft by 200ft parcel of land situate at Amagba Community Ward 36A, Oredo Local Government which location is particularly now described as 1,641.50 square metres in the Certificate of Occupancy number 7f7a1 contained in file Number EDL 55717 as well as described in the litigation Survey Plan No. SEA/ED/D.236/2021.*

The Amended Writ of Summons, Statement of Claim and other accompanying processes were served on all the Defendants but despite several hearing notices served on them, they failed to attend the Court so the hearing commenced without them.

At the hearing, the Claimant's Lawful Attorney testified on behalf of the Claimant, tendered some documentary exhibits and the Claimant closed his case. The Defendants never put up any appearance to defend the suit.

From the evidence adduced at the trial, the Claimant's case is that he is the owner in possession of a parcel of land measuring 100ft by 200ft situate at Amagba Community Ward 36A, Oredo Local Government Area, covered by Certificate of Occupancy No: 7f7a1 contained in file No 55717, described in the litigation Survey Plan No. SEA/ED/D.236/2021 within the jurisdiction of this Honourable Court.

According to the Claimant, by virtue of an application for building plot dated 10/10/09 routed through the Ward 36A Amagba Community Plot Allotment Committee and duly certified free from all encumbrances and approved by the Odionwere on 10/10/09 in favour of one Monday Ehigie, the said Monday Ehigie was allotted the parcel of land measuring 100ft by 200ft.

By virtue of an agreement dated 31st December, 2014 between the said Monday Ehigie and one Mr. Ernest Akpomedaye, the said Earnest Akpomedaye purchased the said land and became owner of the said parcel of land.

Sometime in 2017, the said Mr. Ernest Akpomedaye acting through his lawful attorneys, executed a Deed of Conveyance dated 28th April, 2017 transferring his entire interest in the said 100ft by 200ft to the Claimant who became owner.

The Claimant's Attorney gave evidence of how the Claimant was put in possession of the land in dispute after acquiring same and went ahead to apply for a Certificate of Occupancy, which was granted without any objection from the Defendants or anyone else.

That subsequently, the Defendants trespassed on part of the Claimant's land, cut his concrete wall fence and started to demarcate his land into two, without the Claimant's consent or authority. Thereafter, the Claimant instituted this suit against the Defendants and they subsequently entered into a settlement agreement with the Claimant which he tendered at the trial.

At the trial, the Claimant tendered the following documents in proof of his case: Exhibit A is the Power of Attorney; Exhibit B is the Application for building plot dated 10/10/09; Exhibit C is the land purchase agreement dated 31st December, 2014 between Monday Ehigie and Mr. Ernest Akpomedaye tendered as receipt; Exhibit D is the Deed of Conveyance dated 28th April, 2017 between Mr. Ernest Akpomedaye

and the Claimant tendered as a receipt; Exhibit E is the property survey plan in the name of the Claimant; Exhibit F is a receipt of payment of development fee (Emolu); Exhibit G is the Certificate of Occupancy over the land issued to the Claimant; Exhibit H is the Litigation Survey showing the acts of trespass by the Defendants on the land in dispute; and Exhibit I is a settlement agreement signed by the Defendants with the Claimant wherein they accepted consideration as full and final settlement of whatever interest they may be laying claim to over the said land.

At the close of his case, the Claimant's counsel filed a Final Written Address which he adopted as his final arguments in support of the Claimant's case.

In his written address, the learned counsel for the Claimant, *O.M.Obayuwana Esq.* formulated a sole issue for determination as follows:

“Whether the claimant has proved ownership/title to the land in dispute and entitled to the reliefs sought.”

Arguing the sole issue, learned counsel submitted that in civil cases such as this, the onus on the Claimant is to prove his case on the preponderance of evidence or the balance of probabilities and he relied on the case of *Owie Vs Ighiwi 2005 5 NWLR PT 917 pg 184 @ 192 R 6-8.*

Learned counsel enumerated the five ways of proving title to land as set out by the apex Court in the case of *Idundun v. Okumagba (1976) 9 10 SC 227.* He submitted that a party such as the Claimant herein, who is able to prove one or more of the ways enunciated above is entitled to the land which he claims.

He submitted that the Claimant's Attorney testified and tendered several documentary exhibits to establish his root of title. He emphasised that presentation of title documents is one of the recognised ways of proving title to land and he relied on the following cases: *ADEGBAYO v SHOGO (2005) 7 NWLR (Pt 925)467 at 469 R1, KYARI v ALKALI (2001) 11 NWLR (Pt 724) pg 412 at 416 R1; and AGBOR V. AGOM (2013) LPELR-21122(CA).*

He submitted that the Certificate of Occupancy issued to the Claimant over the land in dispute which was never challenged by the Defendants is a rebuttable evidence of title. He said that the Defendants in Exhibit I, the settlement agreement after receiving money as consideration from Claimant further acknowledged the ownership of the Claimant.

He submitted that it is trite law that a certificate of occupancy is prima facie evidence of title. He maintained that exclusive possession and exclusive rights are provided for in favour of the Claimant in possession of such certificate and he relied on the case *Yakubu V. Impresit Bakolori Plc (2011) All FWLR PART 598 Page 827 @ P. 838, Paras. B-C*.

He submitted that the Claimant has established his title by the production of documents of title which have not been rebutted. He submitted that documentary evidence is very reliable and relied on the case of *Osunbor V. Oshiomhole (2009) All FWLR Part 463 Page 1366 @ Page 1408, Paras. F-H* We urge My Lord to do substantial justice in this case and to evaluate all documentary evidence before it. We rely on the same case of *Osunbor V. Oshiomhole (2009) All FWLR Part 463 Page 1366 @ Page 1407, Paras. B-C*.

He urged the Court to hold that the Claimant has establish ownership of the land in dispute by the production of the documents of title which were not challenged or disputed by the Defendants and also by consistent acts of ownership of the adjoining land and acts of possession.

He posited that the Claimant's Attorney told this Honourable Court that the Claimant has been in effective possession of the said land without any challenge, encumbrances or disturbances whatsoever from any other person. He relied on the cases of *Santi V. Bagobiri (2006) All FWLR Part 292 Pg 100 @ Page 110, paras. B-C*; and *YAZZA & ORS V. KWAGA & ANOR (2013) LPELR-22154(CA)* to substantiate the proof of title by acts of possession.

Counsel submitted that the Claimant having led uncontroverted evidence of ownership supported by title documents, the court is bound to act on the unchallenged Evidence and he relied on the Supreme Court case of *Alhaji Bello Nasir Vs Civil Service Commission, Kano State and 2 ors (2010)All FWLR Part 515 PG 195 @ Page 205, Para E*.

He submitted that minimal proof is required in a case such as this where the Defendants never controverted the Claimant's case. He said that they are not asking for damages in the light of exhibit I which is the settlement agreement.

In conclusion, he urged the Court to resolve the sole issue in favour of the Claimant and grant his relief of declaration of title, exclusive possession and perpetual injunction against the Defendants and their agents, servants or privies.

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 against them 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 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:

- 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. Udejaja (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 by acts of long possession and enjoyment of the land.

On the proof by the production of title documents, the Claimant tendered several title documents as follows: Exhibit D which is the Deed of Conveyance dated 28th April, 2017 between Mr. Ernest Akpomedaye and the Claimant; Exhibit E, the property survey plan in the name of the Claimant; Exhibit F which is a receipt of payment of development fee (Emolu); Exhibit G is the Certificate of Occupancy over the land issued to the Claimant; Exhibit H is the Litigation Survey showing the acts of trespass by the Defendants on the land in dispute; and Exhibit I is a settlement agreement signed by the Defendants with the Claimant wherein they accepted consideration as full and final settlement of whatever interest they may be laying claim to over the said land.

Obviously, the Claimant's strongest title document is his Certificate of Occupancy which was admitted as Exhibit G at the trial. 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, none of the Defendants has adduced any evidence to challenge the validity of the certificate of occupancy which was admitted as Exhibit G. In the absence of any challenge to Exhibit G, I hold that it will suffice to establish the Claimant's title to the land in dispute.

On acts of ownership and long possession of the land, the Claimant led unchallenged evidence to prove that since he acquired the land, he has been in undisturbed possession of the land until the Defendants trespassed into the land. From the uncontroverted evidence of the Claimant, I hold that the Claimant 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*.

Next, on the declaration that the actions of the Defendants amount to trespass on the Claimant's land, it is trite law that trespass to land constitutes the slightest disturbance to the possession of land by a person who cannot show a better right to possession. Possession is the foundation of any claim for trespass. See the cases of *JIAZA VS. BAMGBOSE (1999) 7 NWLR (PT. 610) 182*; *FASIKUN II VS. OLURONKE II (1999) 2 NWLR (PT. 589) 1*; *OSHO VS. FOREIGN FIN. CORP. (1991) 4 NWLR (PT. 184) 157*; *ADELAJA VS. FANOIKI (1990) 2 NWLR (PT. 131) 137*; *ANYABUNSI VS. UGWUNZE (1995) 6 NWLR (PT.401) 255*; and *OROK & ORS V. IKPEME & ORS (2017) LPELR-43493(CA) (PP. 10-12 PARAS. A-A)*.

In the instant case, the Claimant has established that he is in exclusive possession of the land in dispute. Thus, the disturbance of the Claimant's exclusive possession by the Defendants amounts to 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 Defendants from any further acts of trespass on the Claimant's land.

On the order granting the Claimant exclusive possession of the land in dispute, I am of the view that in view in the foregoing findings, the Claimant is entitled to this relief.

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:

- A. A Declaration that by virtue of a certificate of occupancy number 7f7a1 issued by the Governor of Edo State, Godwin Nogheghase Obaseki on 5th October, 2020 registered as No. 115 at page 1 in volume 23 of the certificate of occupancy Digital Register in the EDOGIS Registry office of Edo State at ten O'clock in the morning of 5th November, 2020 by the Chief Registrar of Titles and Instruments, consequent upon a Deed of Conveyance acknowledging receipt of payment of valuable consideration executed in his favour on 28th April, 2017 by his predecessor in interest, Ernest Akpomedaye, who in turn acquired interest from one Mr. Monday Ehigie via an agreement also acknowledging receipt of valuable consideration dated 21st December, 2014, which Monday Ehigie in turn acquired his interest over the parcel of land measuring 100ft by 200ft from Amagba Community via an approval for allocation of building plot dated 10th October, 2009, the Claimant is the owner and the person entitled to exclusive possession of all that parcel of land measuring 100ft by 200ft over which a grant of a statutory right of occupancy has been made in his favour by the government of Edo state represented in the certificate of occupancy as 1,641.50 square metres in Amagba, Oredo Local Government Area of Edo State.*
- B. A Declaration that the brazen act of the Defendants in recently entering into a portion of the said parcel of land, destroying his fence and erecting another fence to cut off a part of the land as shown in the litigation survey plan, without the consent and authority of the claimant amounts to trespass and it is actionable per se.*
- C. An Order of Perpetual injunction restraining the Defendants from ever entering into the said land mentioned in paragraphs A and B above measuring 100ft by 200ft situate at Amagba Community Ward 36A, Oredo Local Government Area which location is particularly now described in the Certificate of Occupancy number Plot No 7f7a1 contained in file No. EDL. 55717 as well shown in the litigation Survey Plan No. SEA/ED/D.236/2021, as well as restrain the Defendant, his or her agents, servants or privies from*

possessing the said land or carrying out any building construction or any trespassory activities whatsoever thereon.

D. An order granting the Claimant exclusive possession over the said 100ft by 200ft parcel of land situate at Amagba Community Ward 36A, Oredo Local Government which location is particularly now described as 1,641.50 square metres in the Certificate of Occupancy number 7f7a1 contained in file Number EDL 55717 as well as described in the litigation Survey Plan No. SEA/ED/D.236/2021.

P.A.AKHIHIERO

JUDGE

18 /10/2022

COUNSEL:

O.M. Obayuwana Esq. -----Claimant.

Unrepresented-----Defendants.

