

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON THURSDAY THE
14TH DAY OF MAY, 2020.

BETWEEN:

SUIT NO: HCU/13/2015

MR. GODDEY E. EIGBE.....CLAIMANT

AND

MR. JEGBEFUMEN EIYENYEN.....DEFENDANT

JUDGMENT

The Claimant's claims against the Defendant are as follows:

(a) A declaration of this Honourable Court that the Claimant is the proper person entitled to apply and be granted a Statutory Right of Occupancy in respect of the piece/parcel of land measuring approximately 75m by 48m by 75m by 48m i.e 250ft by 160ft by 250ft by 160ft lying, situate and being at Uzegua Quarters, Efandion Uromi an area within the jurisdiction of this Honourable Court.

(b) Ten million naira (N10, 000,000.00) as general damages for the act of trespass by the Defendant.

(c) A perpetual injunction restraining the Defendant, his agents, servants, privies and workmen from further encroaching unto the said piece/parcel of land.

The Claimant in proof of his case testified. In his evidence, the Claimant stated that he is the owner of a piece/parcel of land measuring 75m by 48m by 75m by 48m i.e. approximately 250ft by 160ft by 250ft by 160ft, which he acquired from one Mr. Stephen Okosun upon payment of the sum of ₦ 4,300 (four thousand three hundred naira), vide an oral customary transaction.

He further informed the Court that the said oral customary transaction was later reduced into writing on the 23rd day of March, 1992 and one J.S. Ehichioya Esq. prepared a purchase receipt which was tendered and admitted in evidence as Exhibit "A" at the trial.

According to the Claimant, the land in dispute shares common boundaries with the land of Mr. Enorwe Imoisili on one side and that of Mr. Oziegbe Igene on two sides. On the other side of the land, the said Mr. Stephen Okosun his vendor has his land.

The Claimant stated that before he purchased the land, he consulted two of the boundary neighbours to the land to wit: elder Enorwe Imoisili and Daniel Oziegbe Igene who both confirmed that the land now in dispute belonged to Mr. Stephen Okosun now (deceased). That the said Stephen Okosun inherited the land from his late father Pa. Okosun Okoyomon.

The Claimant led evidence to show that immediately after he purchased the land, he was put into physical possession of the entire land during which period he commissioned his cousin, David Aiboralor (the CW1) to be the caretaker over the land. That he financed the cutting down of the trees and the uprooting of the stumps of wood on the land to enable the CW1 to continue to farm on the land. That the CW1 farmed on the land with his wife from 1978 till when the Defendant forcefully trespassed unto the land sometimes in the year, 2011.

That from the time the Claimant acquired title to the land now in dispute till when the Defendant's father died sometime in the year 1992, the Defendant's father never disputed the title or possessory right of the Claimant, neither did he challenge the usage of the land by the CW1.

At the trial, the Claimant's cousin, David Aiboralor testified as the CW1. His evidence is substantially the same with that of the Claimant.

After the Claimant and his witness testified, the Claimant closed his case. Although the Defendant filed a Statement of Defence/Counter-Claim, he never led any evidence in support of his pleadings.

Eventually, the Court foreclosed the Defendant after several adjournments and the matter was fixed for final address.

Only the learned counsel for the Claimant filed his Written Address. In his Written Address, the learned counsel for the Claimant, ***J.E.Enaholo Esq.*** formulated a sole issue for determination as follows:

“Whether from the totality of the statement of claim, front loaded evidence, exhibit tendered and admitted, reply to Defendant’s statement of defense and defense to Counter-Claim, if the Claimant is not entitled to the Judgment of this Honourable?”

Arguing the sole issue for determination, learned counsel submitted that it is trite law that for a Claimant in a land matter for a declaration of title to succeed, the Claimant must establish his root of title upon a preponderance of evidence or on the balance of probability, see the case of ***THOMAS NRUAMAH & ORS V. REUBEN EBUZOEME & ORS (2013) VOL. 221 LRCN (Pt.1.) Pg 221 at Pg 225 Ratio 2.***

AND. MICHAEL EYO V. EMEKA COLLINS ONUOHA (2011) VOL. 195 LRCN Pg 38 at Pg 44 RATIO 2.

Counsel submitted that the Claimant through his statement of claim, front loaded witnesses deposition on oath and admitted exhibits has been able to prove his claim for a declaration of title to the land in dispute based on cogent evidence as required by law to be entitled to judgment because civil cases are determined on the preponderance of evidence and on the balance of probability. See **MICHAEL EYO V. EMEKA COLLINS & ANOR (2011) VOL. 195 LRCN Pg 38 at Pg 44 Ratio 2.**

Again he posited that it is trite law that for a Claimant in a declaration of title to land to succeed, the Claimant must prove the following:

- (a) The exact identity and location of the land;
- (b) The existing boundary neighbour(s);
- (c) The dimension of the land; and
- (d) His root of title.

He submitted that the Claimant in his evidence on Oath informed the Court that the land in dispute is lying, situate and being at Uzegua Quarters, Efandion Uromi a place within the Jurisdiction of this Honourable Court which location and identity was confirmed by the Defendant in his statement of defence and front loaded witnesses deposition on oath. He therefore urged the Court to declare that the Claimant has proved the exact identity and location of the land in dispute as required by law, see the case of **FRANCIS ADESINA AYANWALE V. OLUMUYIWA OLUMIDE ODUSAMI (2012) VOL. 204 LRCN Pg 198 at Pg 203 Ratio 1 AND JOHN FAKUNLE V. MRS. GRACE OKE (2009) 26 W.R.N Pg 143 at Pg 150 Ratio 5.**

Furthermore, learned counsel submitted that the Claimant led unchallenged and uncontroverted evidence in proof of the exact dimension of the land which he acquired sometime in the year, 1977 which is measuring 75m by 48m by 75m by 48m i.e. approximately 250ft by 160ft by 250ft by 160ft as required by law. See the case of **JIMOH ATANDA V. MEMUDU ILIASU (2012) VOL. 214 LRCN Pg 220 at Pg 225 Ratio 1.** He urged the Court to so hold in favour of the Claimant based on his statement of claim and witnesses written deposition on oath, that the land in dispute shares common boundaries with the lands of Mr. Enorwe Imoisili, Mr. Oziegbe Igene on two sides and Mr. Stephen Okosun from whom he acquired his title.

He posited that the Claimant also adduced evidence of how he consulted some elders and neighbours in the course of ascertaining the root of title of the land. He named two of the boundary neighbours like Elder Enorwe Imoisili and Daniel Oziegbe Igene who both confirmed that the land now in dispute belongs to Mr. Stephen Okosun now (deceased) from whom the Claimant derived his title. See the case of **MAJOR MURITALA GBADAMOSI (RTD) V. H.R.H OBA TIJANI**

ADETUNJI AKINLOYE & ORS (2013) VOL. 223 LRCN (Pt.2) Pg 1 at Pg 6 Ratio 6.

Learned counsel submitted that the Claimant has proved his title to the land vide his evidence of how he acquired the land in dispute vide an oral/customary transaction sometime in the year 1977. That the transaction was later reduced into writing vide a purchase receipt which was admitted in evidence as Exhibit “A”.

He submitted that it is the requirement of the law that a Claimant for a declaration of title to the land must prove:

1. By traditional evidence;
2. By production of documents of title which are duly authenticated;
3. By acts of Selling, Leasing, Renting out all or part of the land or farming on it or on a portion of it;
4. By acts of long possession and enjoyment of land; and
5. By proof of possession of connected or, and 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.

See: **IDUNDUN V. OKUMAGBA (1976) 9-10 SC 227. At Pg 212FP.**

He submitted that the Claimant has been able to prove his root of title to the land vide a sales/purchase from Mr. Stephen Okosun which is one of the five ways laid down for proving title to land, see the cases of **FRANCIS ADESINA AYANWALE V. OLUMUYIWA OLUMIDE ODUSAMI (SUPRA) at Pg 203 Ratio 4, THOMAS NRUAMAH & ORS V. REUBEN EBUZOEME & ORS (SUPRA) at Pg 224 Ratio I, ALHAJI MOHAMMED. BUHARI OWODI ANOR V. MALLAM SALIU AJAGBE (2015) VOL. 242 LRCN Pg 99 at Pg 105 Ratio I AND JOHN FAKUNLE V. MRS. GRACE OKE (SUPRA) at Pg 149 Ratio 3.**

He posited that the evidence of the Claimant as corroborated by the CW2 was that immediately after the Oral/Customary transaction, he was led into unchallenged physical possession of the entire land during which period he commissioned his cousin, the CW2 to be the caretaker over the land, and that he financed the cutting down of the trees and the uprooting of the stumps of wood on the land to enable the CW2 to continue farming on the land until when the Defendant forcefully trespassed unto the land sometimes in the year, 2011.

He submitted that while he was in physical possession, the Defendant’s father, late Pa. Eyienyen Ijiekhuemen was still alive until he died sometime in 1992. He posited that for a period of fifteen years, the Defendant’s father never disputed the title or possessory right of the Claimant, neither did he challenge the usage of the land by the CW2.

He contended that flowing from the Claimant’s evidence on Oath and the CW2’s evidence coupled with the purchase receipt marked as exhibit “A”, the Claimant had been in peaceful and undisturbed possession for over a period of (20)

twenty years before 2011 when the Defendant trespassed into the land. Counsel referred the Court to the case of **FRANCIS ADESINA AYANWALE V. OLUMUYIWA OLUMIDE ODUSAMI (SUPRA) at Pg 204 & 206 Ratios 7 & 8 and section 123 of the Evidence Act. 2011.**

He urged the Court to hold that the Claimant is in possession and has a good title over the land that was never challenged till sometime in the year, 2011.

Counsel emphasized that the evidence of the Claimant and CW2 of their various acts of possession and usage of the land which spanned over a period of twenty years was never debunked or contradicted and remains cogent and credible evidence in support of the Claimant's title to the land and he urged the Court to so hold. See the case of **MICHAEL EYO V. EMEKA COLLINS ONUOHA & ANOR (2011) VOL. 195 LRCN Pg 38 at Pg 44 Ratio I.**

He submitted that the Claimant was also able to prove how he investigated the title of his vendor Mr. Stephen Okosun (now deceased) by briefly analyzing how the vendor inherited the land from his father, late Pa. Okosun Okoyomon being the eldest surviving son and after performing the final burial rites in accordance with Esan Native Laws and Custom as applicable in Uzegua as was ably confirmed by the elders of Uzegua Quarters, Efandion Uromi being the Area where the land is situate and the home town of the vendor as contained in paragraphs 14, 16, 21 & 22, 8, 14, 19 & 20 and 6 of the Claimant's statement on Oath and reply to the defendant's statement of defence respectively. See the case of **THOMAS NRUAMAH & ORS V. REUBEN EBUZOEME (SUPRA) at Pg 227 Ratio 5.**

He submitted that the act of the Defendant of forcefully and violently chasing the CW2 being the caretaker to the Claimant away with cutlass by the Defendant sometimes in the year, 2011 which piece of evidence was never contradicted or debunked amounts to trespass to the land and he urged the Court to so hold see the case of **CHIEF ROWLAND TUKURU & ORS V. CHIEF NATHANS SABI & ORS (2013) VOL. 222 LRCN (Pt.1) Pg 65 at Pg 70 Ratio 3.**

He also contended that the Claimant has clearly established with certainty the land and its boundaries, hence he urged the Court to hold that the defendant is in trespass of the land now in dispute. See also **JOHN FAKUNLE VS MRS. GRACE OKE (SUPRA) at Pg 151-152 Ratio 8.**

He submitted that the Defendant and his witnesses in his statement of defense and witnesses deposition on Oath were merely trying to deny the Claimant's existing title by trying to hide under his chequered and unfounded history of inheritance. He submitted that the Defendant failed to defend himself by his statement of defence which contains mere general denials and by his counter claim which disclosed no root of title hence his act of trespass can never grant him title to the land. See the cases of **EQUERE MBAT UKPE V. THE REG. TRUSTEES OF**

THE APOSTOLIC CHURCH OF (NIG) (2012) VOL. 45 W.R.N. Pg 80 at Pgs 88-89 & 85 Ratios 11 & 4.

Learned counsel submitted that the Claimant is entitled to general damages flowing from the Defendant's act of trespass to the Claimant's land, lying situate and being at Uzegua Quarters, Efandion Uromi which parcel of land the Claimant occupied and made use of through the CW2 for a period of over twenty unchallenged years to the knowledge of the Defendant and members of his family before the Defendant forcefully and violently trespassed into the land. See the case of ***JOHN ENEH V. KEVIN OZOR & ANOR (2017) VOL. 263 LRCN Pg 60 At Pg 66-68 Ratio 4 & 6.***

He therefore urged the Court to perpetually restrain the Defendant and anybody acting for him from further trespassing or doing anything contrary to the interest and rights of the Claimant over the land.

He further submitted that the Claimant is entitled to general damages flowing and/or arising from the Defendant's act(s) of trespass into the land which act was inimical to the general interest and right of the Plaintiff over the land. See the case of ***ASABORO & ANOR V. P.O. OIL CORP (NIG) LTD. & ANOR (2017) VOL. 264 LRCN Pg 34 at Pg 46 Ratio 8.***

Counsel submitted that the Defendant's counter-Claim is frivolous as same amounts to gold digging hence they are relying on all the facts contained in their statement of claim and deposition on Oath in defense of the Counter-Claim.

He contended that the Defendant whose great, great grandfather and father hails from Idumu-Obodo Quarters, Efandion Uromi never deforested any land in Uzegua Quarters, Efandion Uromi and that the Defendant did not inherit any land from his father who even in his life time never disputed title either with Mr. Stephen Okosun from whose extended family the Defendant's mother hails from.

He also contended that as they stated in their reply to the statement of defence, Efandion Community is made up of about ten separate and distinct Quarters, which includes Umhonkhonmon, Idune, Idumu-Ague uzegua, Idumu-Oshodin, Idumu-Obodo etc. and that they all have and maintained their separate land, hence no man can leave his Quarter to deforest another Quarter. He urged the court to dismiss the Defendant's Counter-Claim.

Finally he urged the Court to declare that the Claimant is the owner and the person in possession of that piece of land measuring 75m by 48m by 75m by 48m i.e approximately 250ft by 160ft by 250ft by 160ft lying situate and being at Uzegua Quarters, Efandion Uromi which land the Claimant acquired through a valid and legal sales/purchase agreement and that the Claimant is the proper person entitled to apply and be granted Statutory Right of Occupancy over all that land.

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 Claimants 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 there are five ways of proving ownership of land. These are as follows:

- 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 to fifth means of proof. To wit: proof by the production of documents of title; by acts of ownership; by 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 by acts of long possession and enjoyment of the land.

On the proof by the production of title documents, the Claimant tendered a purchase receipt admitted as Exhibit A. 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.

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 prove 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 oral/customary purchase of the land, he was led into unchallenged physical possession of the entire land during which period he commissioned his cousin, the CW1 to be the caretaker over the land, and that he financed the cutting down of the trees and the uprooting of the stumps of wood on the land to enable the CW1 to continue farming on the land until when the Defendant forcefully trespassed unto the land sometimes in the year, 2011.

From the uncontroverted evidence, the Defendant's father, late Pa. Eyienyen Ijiekhuemen was alive when the Claimant was in possession of the land and he never disputed the title or possessory right of the Claimant, neither did he challenge the usage of the land by the CW1. This is evidence of occupation of the disputed land. Acts of possession 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 claim for the sum of ₦10,000, 000:00 (ten 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 Claimants have suffered from the acts of the Defendant.

In the instant case, the Claimants adduced unchallenged evidence to prove that the Defendant forcefully and violently chased away the CW2 the caretaker of the Claimant sometimes in the year, 2011. However, the Claimant did not explain the nature of injury or losses occasioned by the Defendant's violent trespass. Neither did he lead any evidence of what he suffered from the acts of the Defendant.

Going through the entire gamut of the Claimant's evidence, there is no evidence of anything he suffered from the action of the Defendant. It is usual in cases such as this, where the Claimant has not shown that any particular loss was suffered for the Court to award nominal damages. 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.*** In the event, I think the Claimant is only entitled to nominal damages.

On the claim for perpetual injunction, it is settled law that where damages has been awarded for trespass, the Court ought to grant an auxiliary claim for injunction. See: *Ibafon Co. Ltd. vs. Nigerian Ports Plc.* (2000) 8 NWLR (Pt.667) 86 at 102; *Balogun vs. Agbesanwa*(2001) 17 NWLR (Pt.741) 118; and *Onabanjo vs. Efunpitan* (1996) 7 NWLR (Pt.463) 756 at 760-761.

This is the situation in the instant suit.

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 of this Honourable Court that the Claimant is the proper person entitled to apply and be granted a Statutory Right of Occupancy in respect of the piece/parcel of land measuring approximately 75m by 48m by 75m by 48m i.e 250ft by 160ft by 250ft by 160ft lying, situate and being at Uzegua Quarters, Efandion Uromi an area within the jurisdiction of this Honourable Court.*

(b) *Five hundred thousand naira (N500, 000.00) as general damages for the acts of trespass by the Defendant.*

(c) *A perpetual injunction restraining the Defendant, his agents, servants, privies and workmen from further encroaching unto the said piece/parcel of land.*

Costs is assessed at N20, 000.00 (twenty thousand naira) in favour of the Claimant.

P.A.AKHIHIERO
JUDGE
14 /05/2020

COUNSEL:

J.E.Enaholo Esq.....Claimant.

Unrepresented.....Defendant.

