

**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 MONDAY**  
**THE 17<sup>TH</sup> DAY OF OCTOBER, 2022.**

**BETWEEN:**

**SUIT NO. B/679/2020\**

**GENERAL JAH EWANSIHA (RTD) -----CLAIMANT**

**AND**

- 1. MR. ALEX OSAZUWA**
- 2. PERSONS UNKNOWN**
- 3. DIRECTOR, EDO STATE  
GEOGRAPHIC INFORMATION  
SYSTEMS**
- 4. GOVERNOR, EDO STATE**

} -----DEFENDANTS

**JUDGMENT**

The Claimant instituted this suit vide a writ of summons dated the 20th of November, 2020, filed on 23<sup>rd</sup> of November, 2020 claiming against the Defendants jointly and severally as follows:

- (a) A DECLARATION that by virtue of Statutory Right of Occupancy issued in favour of the Claimant by His Excellency, the Executive Governor of Edo State evidenced by Certificate of Occupancy No. EDSR 17444 and dated 2<sup>nd</sup> May, 2013 the Claimant is the legal and bonafide owner of all that parcel of Land known, described and located at Ward 30B Ogheghe Village Area, Benin City, Ikpoba-Okha Local Government Area Edo State measuring about*

***03.665 Hectares as shown in survey plan No. GEO/1489/2013 attached to the Certificate of Occupancy dated 2<sup>nd</sup> May 2013 (“the Claimant’s Land”).***

- (b) A DECLARATION that the actions of the 1<sup>st</sup> Defendant by briefing Sir Edward Aibangbee (KSJI), a Solicitor to draft, prepare and forward to the Claimant for execution purposes, undated Deed of Assignment evidencing a purported assignment of 100feet by 700feet (which is Seven Plots of 100feets by 100feets each) carved out of the Claimant’s Land as gift in consideration of the Claimant’s love and affection for the 1<sup>st</sup> Defendant is fraudulent, illegal, null, void and of no consequential effect.***
- (c) A DECLARATION that the actions of the 1<sup>st</sup> Defendant in inviting the 2<sup>nd</sup> Defendant (Persons Unknown) to enter upon the Claimant’s Land for the purposes of inspection with a view to selling and/or buying portions or plots of land carved out of the Claimant’s Land as well as the act of mobilizing workmen to dig and excavate; destroying the Claimant’s fence, Caveat Notice, and internal fencing of the Claimant’s Land are wrongful, illegal, null, void thus amounting to trespass of the Claimant’s Land.***
- (d) AN ORDER OF PERPETUAL INJUNCTION restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their agents, servants and privies howsoever described whether acting jointly or severally from trespassing and/or further trespassing into the Claimant’s Land and /or taking any step(s), action(s), sanction(s) and measures, whether actual or constructive, that are likely to and/or would interfere with the Claimant’s title to all that parcel of land located at Ward 30B Ogheghe Village Area, Benin City, Ikpoba-Okha Local Government Area Edo State measuring about 03.665 Hectares as shown in survey plan No. GEO/1489/2013 attached to the Certificate of Occupancy dated 2<sup>nd</sup> May 2013.***
- (e) AN ORDER OF PERPETUAL INJUNCTION restraining the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, their agents, servants and privies howsoever described whether acting jointly or severally from recognizing and/or according any iota of validity to any purported document of title, transfer, Letter of allocation, Power of Attorney, Deed of Assignment, Deed of Gift or any other document of title howsoever described purportedly or allegedly emanating from the Claimant in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and/or emanating from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on behalf of the Claimant or from taking any step(s), action(s), sanction(s) and measures, whether actual or constructive, that are likely to and/or would interfere with the Claimant’s title to all that parcel of***

*land located at Ward 30B Oghedhe Village Area, Benin City, Ikpoba-Okha Local Government Area Edo State measuring about 03.665 Hectares as shown in survey plan No. GEO/1489/2013 attached to the Certificate of Occupancy dated 2<sup>nd</sup> May 2013 without prior consent and/or notification of the Claimant.*

*(f) AWARD OF PUNITIVE AND EXEMPLARY DAMAGES in the sum of N10, 000, 000.00 (Ten Million Naira) against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants jointly and severally for the physiological trauma cum stress the Claimant has been put through by reason of their acts of trespass.*

*(g) AWARD OF COST of N2, 000, 000.00 (Two Million Naira) against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants being Solicitor's fee for prosecuting this action.*

*(h) An Award of 25% post-judgment annual interest on the entire judgment sum from the date of delivery of judgment till same is fully liquidated.*

The Writ of Summons, Statement of Claim and other accompanying processes were served on all the Defendants but only the 3<sup>rd</sup> and 4<sup>th</sup> Defendants entered their appearance to defend the suit. Despite several hearing notices served on them, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants failed to attend the Court so the hearing commenced without them.

At the hearing, the Claimant testified, tendered some documentary pieces of evidence and called one witness in support of his case.

In his evidence, the Claimant stated that by virtue of a Statutory Right of Occupancy dated 2<sup>nd</sup> May, 2013 and evidenced by Certificate of Occupancy No. EDSR 17444, the 4<sup>th</sup> Defendant in this suit, granted him, title to all that parcel of land known, described and located at Ward 30/B Oghede Village Area, measuring approximately 03.665 hectares and particularly delineated in the survey Plan No. Geo/1489/2013 and lying along Benin- Sapele Road in Ikoba-Okha Local Government Area of Edo State and that the particulars of the Land were duly registered by the Deeds Registrar as NO. 30 at page 30 in Volume B277 of the Lands Registry, Benin City, Edo State overseen by the 3<sup>rd</sup> Defendant. He tendered the Certificate of Occupancy which was admitted as Exhibit A at the trial.

Testifying further, he stated that sometime in January, 2017 he received from the Law Firm of Aibangbee Esq., three (3) copies of an undated Deed of Assignment prepared in the year 2016 for execution by the Claimant. According to him, by the said Deed of Assignment, the Claimant was alleged to be assigning 100feet by 700feet (seven plots) out of his land to the 1<sup>st</sup> Defendant, Mr. Alex Osazuwa in consideration

of the Claimant's love and affection for the 1<sup>st</sup> Defendant. A copy of the undated Deed of Assignment was admitted as Exhibit B at the trial.

The Claimant further stated that he had no prior notice, discussions or consent to the purported assignment of a portion of his land to the 1<sup>st</sup> Defendant. He said that upon inquiry, he discovered that the 1<sup>st</sup> Defendant had fraudulently briefed a solicitor to prepare the Deed of Assignment on a false claim that the Claimant intended or had consented to assign a portion of his land to the 1<sup>st</sup> Defendant on grounds of love and affection.

Upon this discovery, the Claimant allegedly took steps to halt the transaction and informed the Solicitor involved about the falsity of the claim. He said that the Solicitor apologized for the error of his brief and undertook to refrain from further actions in respect of same. The Claimant took further steps to instruct his own Solicitor, Mr. Charles Abalaka Esq. to write to the Permanent Secretary, Edo State Ministry of Lands and Survey to report the 1<sup>st</sup> Defendant's illegal activities concerning his land. His solicitor wrote the Permanent Secretary and the Permanent Secretary responded to the Claimant's letter via its Director of Lands by its letter with reference number C.1627/30 dated 30<sup>th</sup> May, 2017 and reaffirmed the true position that title to the said Plot of Land was still vested in the Claimant. The Letter from the Edo State Ministry of Lands was admitted as Exhibit D at the trial.

The Permanent Secretary also allegedly advised the Claimant to immediately place a caveat on his Certificate of Occupancy to prevent any further transactions on his title without his notification and authorization. The Claimant again instructed his solicitor who immediately placed the caveat as advised.

The Claimant testified further that despite the caveat, the 1<sup>st</sup> Defendant has continued to trespass on the land by bringing the 2<sup>nd</sup> Defendant to inspect the land with a view to selling part of it. He testified that the 1<sup>st</sup> Defendant had trespassed into the land by mobilizing workmen to dig and excavate the land, thereby destroying part of the fence and even removed the Claimant's Caveat Notice placed on the land. The pictures of the alleged acts of trespass on the land were tendered and admitted as Exhibits F to F8 at the trial.

The Claimant testified that since the 31<sup>st</sup> day of December, 2008 when he purchased the land from one Mr. Jeremiah A. Omoregbee by virtue of a Deed of Transfer dated 31<sup>st</sup> December, 2008 and the subsequent grant of title to the Claimant over the Claimant's Land by His Excellency, the Executive Governor of Edo State in 2013, that he has been in exclusive possession of the land.

At the trial, the Claimant called one Mr. Lucky Ehebho who he claimed was his agent as a witness. The said witness essentially corroborated the Claimant's testimony.

The Claimant stated that he has suffered severe physiological trauma and stress occasioned by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' joint and several acts of trespass and that

unless the Defendants' are restrained in the manner sought, there is great likelihood that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' could surreptitiously approach the 3<sup>rd</sup> and 4<sup>th</sup> Defendants for presentation and recognition of documents of title that did not emanate from the Claimant, unknown to the Claimant and perfection of title may erroneously occur without his knowledge and consent.

The Claimant finally told the Court that in briefing Mr. Charles Abalaka Esq. of Abalaka & Co to commence this action, he paid him the sum of N2, 000, 000.00 (Two Million Naira) as fees to prosecute this suit against the Defendants. He tendered the Solicitor's receipt of payment of the professional fees which was admitted as Exhibit G.

Upon conclusion of the Claimant's case, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants failed and/or neglected to attend the proceedings after being duly served with hearing notices. They were therefore foreclosed and the 3<sup>rd</sup> and 4<sup>th</sup> Defendants were allowed to lead their evidence in defence of the suit.

In defence of this suit, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants called one Mr. Michael Izekor Iguma, a staff of Edo State Ministry of Lands and Survey who testified as D.W.1.

In his evidence, the DW1 stated that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants acted within the confines of their official duties and never commissioned the 1<sup>st</sup> and 2<sup>nd</sup> Defendants or any other person to enter or trespass unto the Claimant's land. Furthermore, he affirmed that as at the date of his testimony, the title to the land was still vested in the Claimant. After the testimony of the D.W.1, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants closed their defence and the matter was adjourned for final addresses.

The learned counsel for the Claimant filed a written address which he adopted as his final arguments in support of the Claimant's case. The learned Assistant Director who represented the 3<sup>rd</sup> and 4<sup>th</sup> Defendants at the trial did not file any written address but informed the Court that they were nominal parties in the suit and the Claimant did not have any monetary claims against them.

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

***“Whether having regard to the evidence led at trial, the Claimant has discharged its burden of proof of title to all that Land situate and located at Ward 30B Ogheghe Village Area, Benin City, Ikpoba-Okha Local Government Area Edo State measuring about 03.665 Hectares as shown in survey plan No. GEO/1489/2013 attached to the Certificate of Occupancy No. EDSR 17444 dated 2<sup>nd</sup> May 2013 (“the Land”) and thereby entitled to all its other reliefs sought before this Honourable Court?”***

Thereafter, the learned counsel articulated his arguments on the sole issue for determination under some sub-headings.

### **TITLE**

On the issue of title, learned counsel submitted that the law is trite that an applicant for declaration of title to land has the task of proving that he is entitled to a declaration of title to the land in dispute. He enumerated the five ways of proving title to land as established in the case of *Idundun v Okumagba (1976) 1 All NLR 2000*. He posited that by any one of the means of proof is sufficient to prove title to land and he relied on the decisions of the courts in the following cases: *AYOOLA V ODOFIN (1984) 11 SC 120*; *EWO V ANI (2004) 17 NSCQR 36, (2004) 1 SCNJ 272*; *NDUKUBA V IZUNDU (2007) 1 NWLR (PT 1016) 432*; *NKADO V OBIANO (1997) 5 NWLR (PT 503) 31*; *NKWO V IBOE (1998) 7 NWLR (PT. 558) 354*, *ADESANYA V ADEROUNMU (2000) 13 WRN 104*.

He said that in the instant case, the Claimant has met the requirement of law in the circumstance and ought to be granted his reliefs.

He submitted that the Claimant's Exhibit A remains unchallenged and all his pleadings as well as evidence led in that regard remain uncontroverted and admitted by all the Defendants. On this point, he relied on the cases of *ADAMAWA STATE MINISTRY OF LAND & SURVEY V. SALISU (2021) 2 NWLR (PT.1759) 1 C.A* where the Court of Appeal held thus –

*“Where the Plaintiff pleads and gives evidence in support of his claim for declaration of title and his evidence is neither challenged nor contradicted, the trial Court is bound to accept the evidence unless there is something inherent in the evidence which disproves it. Where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always open to the Court seised of the proceedings to act on the unchallenged evidence before it”*

He also relied on the case of *DAMUNA V. STATE (2021) 4 NWLR (PT. 1767) 419 C.A.*

Counsel posited that the testimony of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants' and the DW1 learns credence to the Claimant's evidence before this Honourable Court in respect of title. He therefore urged the Court to grant the relief sought in the interest of justice.

### **FRAUD**

Learned counsel posited that the Claimant's Relief No.3 seeks a Declaration that the actions of the 1<sup>st</sup> Defendant in briefing a Solicitor to prepare and transfer to the Claimant for execution, an undated Deed of Assignment, assigning a portion of the Claimant's Land to the 1<sup>st</sup> Defendant in consideration of love and affection but without the Claimant's knowledge and consent were fraudulent.

He said that in further support of the Claimant's assertions, the Claimant pleaded the particulars of the 1<sup>st</sup> Defendant's fraud in paragraph 14 of his Statement of Claim and led evidence to that effect in paragraph 15 of his Witness Statement on Oath. He emphasised that neither the Claimant's pleadings nor evidence in this regard was controverted by evidence led by the 1<sup>st</sup> Defendant. That in further proof of the 1<sup>st</sup> Defendant's fraud, the Claimant tendered the false Deed of assignment as Exhibit B.

Learned counsel submitted that the term 'fraud' means a misrepresentation made recklessly without belief in its truth and intended to induce another person to act. He cited *Black's Law Dictionary, 9<sup>th</sup> edition* as well as the cases of *Ojukwu V. FRN ("019) 24 W.R.N pg. 37* and *Dozie V. Onukwo (2020) 9 NWLR (Pt. 1729) @ pg 365*.

Again, he maintained that in the instant case, the Claimant's pleadings and evidence have neither been controverted nor challenged by the 1<sup>st</sup> Defendant as it relates to the Claimant's allegations of fraud against the 1<sup>st</sup> Defendant. He urged the Court to hold that this allegation of fraud has been proved.

## **TRESPASS**

In respect of Trespass, counsel posited that the word 'Trespass' is defined at page 1642 of the 9<sup>th</sup> Edition of the *Black's Law Dictionary* as "*An unlawful act of committed against the person or property of another; especially wrongful entry on another's real property*".

Similarly he relied on the decision of the Supreme Court in the case of *OYEWUSI V OLAGBAMI (2018) 51 W.R.N 69* where they defined trespass as the "*wrongful entry into the land in actual or constructive possession of another*". He also cited the following decisions on the point: *Olaniyan v fatoki (2003) 13 NWLR (Pt 837) 273 at 278*, *Eneh v Ozor & Anor. (2016) 41 W.R.N 1; (2016) LPELR – 40830 (SC) at 24-25 paragraph B-D*.

He submitted that trespass is a tort which is rooted in the right of exclusive possession by a Claimant and he relied on the case of *OYEWUSI V OLAGBAMI (Supra)*.

Again, learned counsel submitted proof of title and/or ownership is prima facie proof of possession and he relied on the decision of the Supreme Court in the case of *AYANWALE V ODUNSAMI (Supra)*.

He posited that the pleadings and evidence before this Court established the fact that the Claimant has been in exclusive possession of the land to the exclusion of the whole world since he acquired it in 2013.

He therefore urged the Court to grant the Claimant's relief number 3.

### **PERPETUAL INJUNCTION**

On the Claimants' reliefs' No:- 4 and 5 which are for Perpetual Injunctions, learned counsel submitted that the Claimant is entitled to a grant of an order of perpetual injunction against the Defendants in the circumstances of this case. He submitted that injunctive reliefs are equitable remedies are meant to give force and effect to successful claims for declaration and trespass.

He submitted that having succeeded in proving title to the land, the claim for injunction ought to be granted and he relied on the case of **LAMBE V. AREMU (2013) 7 W.R.N 55 (CA)**

He submitted that in the instant case, there is no gainsaying the fact that the Absolute Owner of the Land in dispute is the Governor of Edo State (the 4<sup>th</sup> Defendant) whose department of Lands is superintended by the 3<sup>rd</sup> Defendant (EDOGIS). That, having joined both parties to this suit, the Claimant has met the requirement of Law and he urged the Court to grant the said reliefs. He referred the Court to the case of **CHIEF DADA, THE LOJAOKE V CHIEF SHITTU OGUNREMI & ANOR 1967 NMLR 181** where the Court of Appeal expounded on the principle as follows-  
***"...it is improper to grant a perpetual injunction at the instance of a limited owner when, the owner of the absolute interest is not a party"***

### **DAMAGES/COSTS**

Counsel submitted that it is trite law that costs follow events. That while a successful party is entitled to general damages and costs as may be discretionally awarded by the Court, they are not awarded as of course but according to laid down principles and authorities.

On damages, he relied on the cases of **ELF PETR. NIG. LTD V UMAH (2018) 43 W.R.N 6 – 7; TSEGBA V THE REGISTERED TRUSTEES OF MISSION HOUSE (2018) 26 W.R.N 144-145; OSUJI V ISIOCHA (1989) 3 NWLR (PT 111) 623 AT 640; and DUMEZ V OGBOLI (1972) 2 S.C 196 ANF FEDERAL MORTGAGE FINANCE LTD V HOPE EFFIONG EKPO (2004) 2 NWLR (PT. 865) 100 AT 132.**

Submitting on the Claimant's claim for the sum of N10, 000, 000.00 (Ten Million Naira) as general damages, he submitted that having led evidence in this regard which was not challenged and/or controverted by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the



Claimant is entitled to a grant of the relief as claimed before this Honourable Court and he urged the Court to so hold.

On costs, counsel submitted that it is trite law that costs follow events. Thus, while a successful party is entitled to costs as may generally be awarded by the Court, the Court has a duty to act judicially and judiciously in the circumstance. He referred to the case of *WEMA BANK PLC. V A.R.F.A (NIG) LTD (2016) 4 W.R.N @ PG 154 – 155*.

He posited that in the instant case, the Claimant has asked for cost of N2, 000, 000.00 (Two Million Naira) which is a specific sum being claimed by the Claimant. According to him, the position of the law is that when cost is claimed on the writ, it is a claim for special damages which must be proved specifically and he relied on the decision of the Court of Appeal in the case of *Lonestar Drilling Nig Ltd vs New Genesis Executive Security Ltd (2011) LPELR – CH/PH/142/200*.

Counsel posited that the Claimant's pleadings and evidence led in support of his claim for costs was neither challenged nor controverted. He therefore urged the Court to grant same in the interest of justice.

### **POST-JUDGMENT INTEREST**

On post judgment interest, counsel submitted that it is settled law that in awarding post-judgment interests the Court is usually guided by either the Custom of trade, a Pre-Litigation Agreement of Parties and/or the Rules of Court.

He posited that the Claimant's relief seeking 25% post – judgment interests is supported by the Rules of this Court in Order 34 Rule 5 of the Rules. While conceding that the Rules pegs Post Judgment interests at 20%, he maintained that it still ultimately rests on the discretion of the Court and he urged the Court to judicially and judiciously award post judgment interests on any sums of money awarded against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

In conclusion learned counsel urged the Court to grant all of the Claimant's reliefs in the interest of justice.

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 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not put up any defence to this suit. Thus, the evidence of the Claimant against them remains unchallenged. Furthermore, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants who filed their processes and led evidence are not really challenging the Claimant's case. As a matter of fact, the evidence adduced by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants are essentially in support of the Claimant's case. In effect the Claimant's case is completely 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. 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 by acts of long possession and enjoyment of the land.

On the proof by the production of title documents, the Claimant tendered his Certificate of Occupancy No. EDSR 17444 issued by the 4<sup>th</sup> Defendant as Exhibit A in this suit. 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 A. 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 long possession of the land, the Claimant led unchallenged evidence to prove that since the 31<sup>st</sup> of December, 2008 when he purchased the land from one Mr. Jeremiah A. Omoregbee by virtue of a Deed of Transfer dated 31<sup>st</sup> December, 2008 and the subsequent grant of title to him by Exhibit A in 2013, he has been in exclusive possession of the land.

At the trial, the Claimant called one Mr. Lucky Ehebho who essentially corroborated the Claimant's testimony that he has been in exclusive possession of the land from the time he acquired it till date. From the uncontroverted evidence of the Claimant and his witness, 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*.

On the declaration that the actions of the 1st Defendant by briefing, a Solicitor to prepare an undated Deed of Assignment evidencing a purported assignment of part of the Claimant's land as gift to the 1st Defendant is fraudulent, illegal, null, void and of no consequential effect, I agree entirely with the learned counsel for the Claimant that the entire transaction was fraudulent, illegal, null and void.

Next, on the declaration that the actions of the 1st Defendant and 2<sup>nd</sup> 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 of 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 is dispute. Thus, the disturbance of the Claimant's exclusive possession by the 1<sup>st</sup> and 2<sup>nd</sup> 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 Defendant, his Agents, privies or servants from any further acts of trespass on the Claimant's land.

On the claim for the award of punitive and exemplary damages in the sum of N10, 000, 000.00 (Ten Million Naira) against the 1st and 2nd Defendants jointly and severally for the physiological trauma cum stress the Claimant has been put through by reason of their acts of trespass, it is settled law that exemplary damages has been described as an intermix of general and punitive damages. While speaking on the nature of exemplary damages, the Supreme Court in the case of **ELIOCHIN (NIG) LTD & ORS V. MBADIWE (1986) LPELR-1119 (SC)** held as follows: "...The primary object of an award of damages is to compensate the plaintiff for the harm done to him or a possible secondary object is to punish the defendant for his conduct in inflicting that harm. Such a secondary object can be achieved by awarding, in addition to the normal compensatory damages, damages which go by various names to wit; exemplary damages, punitive damages; vindictive damages, even retributory damages can come into play whenever the defendant's conduct is sufficiently outrageous to merit punishment as where it discloses malice, fraud, cruelty, insolence, flagrant disregard of the law and the like. See also the cases of **KABO AIR LTD V. MOHAMMED (2014) LPELR 23614 (CA); and CHEVRON (NIG) LTD & ANOR V. OMOREGHA & ORS (2015) LPELR-24516(CA)(PP. 26-27 PARAS. E).**

Thus the fundamental objective for the award of damages is to compensate the Claimant for the harm and injury caused by the Defendant. See: **Chevron (Nig.) Ltd. vs. Omoregha supra.**

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 evidence adduced by the Claimant, the acts of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants discloses some elements of malice, fraud, cruelty, insolence and flagrant disregard of the law. This is sufficient to support the award of exemplary or punitive damages.

Furthermore, the Claimant gave evidence of how the 1<sup>st</sup> Defendant trespassed into the land by mobilizing workmen to dig and excavate the land, thereby destroying part of the fence and even removed the Claimant's Caveat Notice placed on the land. The pictures of the alleged acts of trespass on the land were tendered and admitted as Exhibits F to F8 at the trial.

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 fence that was destroyed by the Defendant or the Caveat Signpost that was removed from the land. 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 Defendants.

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)*.

In the instant case, I will exercise my discretion to award a reasonable sum as exemplary damages to compensate the Claimant and to sanction the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for their impunity.

On the relief for the sum of N2, 000, 000.00 (Two Million Naira) as costs against the 1st and 2nd Defendants being Solicitor's fee for prosecuting this action, I think it would have been more straight forward if the Claimant had brought this relief under a claim for special damages. As the counsel rightly submitted, the position of the law is that when costs is claimed on the writ, it becomes a claim for special damages which must be proved specifically. See the case of *Lonestar Drilling Nig Ltd vs New Genesis Executive Security Ltd (2011) LPELR – CH/PH/142/200*.

Furthermore, on the award of costs, *Order 50 Rule 1 of the Edo State High Court (Civil Procedure) Rules, 2018 stipulates as follows:*

*"(1) In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been necessarily put in the course of proceedings, as well as compensated for his time and effort in coming to Court. Such expenses shall include:*

***(a) the cost of legal representation and assistance of the successful party to the extent that the Judge determines that the amount of such cost is reasonable;***”

At the trial, the Claimant testified that he briefed his counsel to prosecute this case and paid him the sum of N2, 000, 000.00 (Two Million Naira) as litigation fees. He tendered the Solicitor’s receipt of payment of the professional fees which was admitted as Exhibit G.

In the case of ***AKINBOBOLA vs. PLISSON FSKO NIGERIA LTD (1991) 1 NWLR (PT 167) 270, Kawu, JSC*** stated inter alia thus:

***"The award of costs is of course, always at the discretion of the Court which discretion must be exercised both judicially and judiciously... It is also a well-established principle that costs follow events and that a successful party is entitled to cost unless there are special reasons for depriving him of his entitlement..."***

***The essence of costs is to compensate the successful party for part of the loss incurred in the litigation. Costs cannot cure all the financial losses sustained in the litigation. It is also not meant to be a bonus to the successful party, and it is not to be awarded on sentiments."***

From the available evidence and by virtue of the provisions of Order 50, Rule 1 supra, I think the Claimant is entitled to recover the sum of N2,000,000.00 (Two Million Naira) which he spent in prosecuting this suit.

Finally on the award of 25% post-judgment annual interest on the entire judgment sum from the date of delivery of judgment till same is fully liquidated, I am of the view that the said percentage is quite excessive. ***Order 34 Rule 4*** of our rules clearly stipulates that the Court may order interest ***“at a rate not more than 20% per annum to be paid upon any judgment.”*** In view of the obvious economic down turn, I will impose the rate of 5% per annum.

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 Statutory Right of Occupancy issued in favour of the Claimant by His Excellency, the Executive Governor of Edo State evidenced by Certificate of Occupancy No. EDSR 17444 and dated 2<sup>nd</sup> May, 2013 the Claimant is the legal and bonafide owner of all that parcel of Land known, described and located at Ward 30B Ogheghe Village Area, Benin City, Ikpoba-Okha Local Government Area Edo State measuring about 03.665 Hectares as shown in survey plan No. GEO/1489/2013 attached to the Certificate of Occupancy dated 2<sup>nd</sup> May 2013.***

- (b) A DECLARATION that the actions of the 1<sup>st</sup> Defendant by briefing Sir Edward Aibangbee (KSJI), a Solicitor to draft, prepare and forward to the Claimant for execution purposes, an undated Deed of Assignment evidencing a purported assignment of 100feet by 700feet (which is Seven Plots of 100feets by 100feets each) carved out of the Claimant's Land as gift in consideration of the Claimant's love and affection for the 1<sup>st</sup> Defendant is fraudulent, illegal, null, void and of no consequential effect.***
- (c) A DECLARATION that the actions of the 1<sup>st</sup> Defendant in inviting the 2<sup>nd</sup> Defendant (Persons Unknown) to enter upon the Claimant's Land for the purposes of inspection with a view to selling and/or buying portions or plots of land carved out of the Claimant's Land as well as the act of mobilizing workmen to dig and excavate; destroying the Claimant's fence, Caveat Notice, and internal fencing of the Claimant's Land are wrongful, illegal, null, void thus amounting to trespass of the Claimant's Land.***
- (d) AN ORDER OF PERPETUAL INJUNCTION restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their agents, servants and privies howsoever described whether acting jointly or severally from trespassing and/or further trespassing into the Claimant's Land and /or taking any step(s), action(s), sanction(s) and measures, whether actual or constructive, that are likely to and/or would interfere with the Claimant's title to all that parcel of land located at Ward 30B Ogheghe Village Area, Benin City, Ikpoba-Okha Local Government Area Edo State measuring about 03.665 Hectares as shown in survey plan No. GEO/1489/2013 attached to the Certificate of Occupancy dated 2<sup>nd</sup> May 2013.***
- (e) AN ORDER OF PERPETUAL INJUNCTION restraining the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, their agents, servants and privies howsoever described whether acting jointly or severally from recognizing and/or according any iota of validity to any purported document of title, transfer, Letter of allocation, Power of Attorney, Deed of Assignment, Deed of Gift or any other document of title howsoever described purportedly or allegedly emanating from the Claimant in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and/or emanating from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on behalf of the Claimant or from taking any step(s), action(s), sanction(s) and measures, whether actual or constructive, that are likely to and/or would interfere with the Claimant's title to all that parcel of land located at Ward 30B Ogheghe Village Area, Benin City, Ikpoba-Okha Local Government Area Edo State measuring about 03.665 Hectares as shown in survey plan No. GEO/1489/2013 attached to the Certificate of***

*Occupancy dated 2<sup>nd</sup> May 2013 without prior consent and/or notification of the Claimant.*

*(f) AWARD OF PUNITIVE AND EXEMPLARY DAMAGES in the sum of N2, 000, 000.00 (Two Million Naira) against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants jointly and severally for the physiological trauma cum stress the Claimant has been put through by reason of their acts of trespass.*

*(g) AWARD OF COST of N2, 000, 000.00 (Two Million Naira) against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants being Solicitor's fee for prosecuting this action.*

*(h) An Award of 5% post-judgment annual interest on the entire judgment sum from the date of delivery of judgment till same is fully liquidated.*

**P.A.AKHIHIERO JUDGE**  
**17 /10/2022**

**COUNSEL:**

*Charles Abalaka Esq. -----Claimant.*

*Unrepresented-----1<sup>st</sup> & 2<sup>nd</sup> Defendants.*

*Mrs. Pamela Eremwanarue-----3<sup>rd</sup> & 4<sup>th</sup> Defendants.*



