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 TUESDAY

THE 7TH DAY OF MARCH, 2023.

BETWEEN: ***SUIT NO. B/815/2021***

PHARM. EMWINOMA AGBONDINMWIN OSADOLOR ----------CLAIMANT

AND

MR. ARUTODE KELVIN AJISE ----------DEFENDANT

JUDGMENT

The Claimant's extant Statement of Claim is his Amended Statement of Claim dated the 6th day of June, 2022 and filed on the 8th day of June, 2022 wherein he is claiming against the Defendant as follows:

i. ***A DECLARATION that the Claimant is the rightful person entitled to apply and be granted Statutory Right of Occupancy in respect of all that piece or parcel of land measuring 100ft by 200ft (One Hundred Feet by Two Hundred Feet) situate at Princess Ighiwiyisi Eweka's Estate, Ogba Road, Benin City, now No. 50, Gapiona Street, G.R.A, Benin City, bounded by Survey Plan No: CSE/20/2 wherein the Defendant trespassed on the said land measuring 100ft by 200ft within the jurisdiction of this Honourable Court;***

ii. ***A DECLARATION that the trespass by the Defendant on the Claimant's land is wrong and done without the consent and authority of the Claimant;***

iii. ***The sum of N5, 000,000.00 (Five Million Naira) as general damages from the Defendant for trespass and for activities inconsistent with the Claimant's right and interest therein;***

iv. ***An Order directing the Defendant to vacate and remove whatever structures he may have built on the Claimant's land without his consent and authority; and***

v. ***AN ORDER of perpetual injunction restraining the Defendant, his agents, servants, privies and/or assigns from committing any further acts of trespass on the said land and from continuing to do anything inconsistent with the Claimant's rights and interest therein.***

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.

In proof of his case, the Claimant testified and called one witness, to wit: James Amadin Osazuwa, a Registered Surveyor.

In the course of his evidence the Claimant also tendered some relevant documents which were admitted in evidence as Exhibits A-G.

The Claimant's case is that he is the rightful owner of a parcel of land measuring 100ft by 200ft (One Hundred Feet by Two Hundred Feet) situate and lying at Princess Ighiwiyisi Eweka's Estate, Ogba Road, Benin City, now No. 50, Gapiona Street, G.R.A, Benin City as comprised in Survey Plan No: CSE/20/2.

He alleged that he acquired the parcel of land vide a purchase from one Samson U. Imalele vide a Deed of Transfer dated the 14th of March, 2018. The said Deed of Transfer was tendered as a receipt and admitted in evidence as Exhibit A at the trial.

According to the Claimant, one Chief Arutode Emakpor Ajise was the original owner of the said land which was a part of a larger parcel of land measuring 300ft by 200ft which was originally allocated to him.

He alleged that Samson U. Imalele (His Predecessor-In-Title) acquired title to the said land measuring 100ft by 200ft (One Hundred Feet by Two Hundred Feet) from the said Chief Arutode Emakpor Ajise.

He traced the root of title of Chief Arutode Emakpor Ajise to an application through the Plot Allotment Committee to His Royal Majesty, Oba Akenzua II, Oba of

Benin, for a grant of the original parcel of land which was duly approved by His Royal Majesty.

He further stated that by a Deed of Transfer executed on the 20th day of October, 1993, the said Chief Arutode Emakpor Ajise transferred a parcel of land measuring 100ft by 200ft out of his entire parcel of land mentioned above to his Predecessor-in-Title. The photocopies of the Oba's Approval dated 20/12/72 and the Deed of Transfer made on 20/10/93 were admitted in evidence as Exhibits B and B1 respectively.

Upon his purchase of the land, his Predecessor-in-Title allegedly surveyed the land in his name vide a Survey Plan No: CSE/20/2 dated the 17/4/1993 which was admitted in evidence as Exhibit F.

The Claimant maintained that his Predecessor-in-Title was in peaceful and undisturbed possession of the land before he transferred same to him vide Exhibit A and he has been in undisturbed possession of the said land, exercising various acts of possession and ownership over same until the Defendant forcefully trespassed on the said land sometime in April, 2019.

He said that upon the alleged trespass by the Defendant, he instructed his lawyer to write him warning letters. The two warning letters from K.O. Owie Esq. dated 3/5/21 and 4/6/21 were admitted in evidence at the trial as Exhibits C and C1 respectively.

The Claimant stated that upon the receipt of the said warning letters, the Defendant through his own lawyer, one K. O. Ukpebor Esq, wrote two letters in response. One of the letters dated 25/6/21 was admitted in evidence as Exhibit D.

The Claimant alleged that after the service of the warning letters, the Defendant refused to heed to the contents of the said letters so his lawyer wrote two petitions, one to the Commissioner of Police and the second one to the Assistant Inspector General of Police. The two petitions both dated 25/6/21 were admitted in evidence as Exhibits E and E1 respectively.

The Claimant alleged that he hired a Surveyor to carry out a Litigation Survey of the disputed property and a Litigation Survey Plan No: JAO/ED2022/10L dated 5th day of February, 2022 was produced and a Certified True Copy of the Litigation Survey Plan was admitted as Exhibit G.

Upon the conclusion of the Claimant's evidence in chief, the Court adjourned for the Defendant to come forward to cross examine him and fresh hearing notice was served on the Defendant. The Defendant failed to put up any appearance and the Court

foreclosed him and the Claimant's sole witness testified. The Court again adjourned the matter for cross examination and when the Defendant failed to come forward for cross examination the Court foreclosed him. The Claimant closed his case and the matter was adjourned for defence.

On the day of defence, the Defendant failed to attend Court despite the Hearing Notices that were issued and served on him. The Court foreclosed him and the matter was adjourned for adoption of the Final Written Address. The Claimant's Final Written Address was served on the Defendant but he did not make any response.

On the day of final address, the learned counsel for the Defendant adopted his Final Written Address as his final arguments in support of the Claimant's case.

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

"Whether the Claimant has been able to establish his title before this Honourable Court in view of the evidence led and the exhibits tendered before this Honourable Court"

Opening his arguments on the sole issue, the learned counsel submitted that the Claimant has established his title to the said parcel of land with credible and admissible evidence proffered by him.

He posited that under Nigerian law, the five methods of proving title to land are as follows:

a. ***By Traditional Evidence;***
b. ***By Production of Documents of Title Duly Authenticated and Executed;***
c. ***By Acts of Ownership Extending Over a Sufficient Length of Time Numerous and Positive enough to Warrant the Inference of True Ownership;***
d. ***By Acts of Long Possession and Enjoyment; and***
e. ***Proof of Possession of Connected or Adjacent Land in Circumstance Rendering it Probable that the Owner of such Connected or Adjacent Land would, in Addition be the Owner of the Land in Dispute. We rely on the following Authorities.***

In support of the above proposition, he relied on the following authorities:

i. ***AWODI VS. AJAGBE (2015) 3 NWLR (PT 1447) PAGE 578; and***

ii. IDUNDUN V. OKUMAGBA (1976) 9-11 SC 227

He submitted that a party is not required to prove all the five methods. That from the Evidence proffered; the Claimant established his title with proof of his title documents which were never controverted, challenged or contradicted.

Furthermore, he submitted that the Claimant also proved his title through acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference of true ownership.

He emphasized that despite the service of all the court processes on the Defendant, he failed, refused and neglected to attend this Honourable Court to defend the claim against him.

He posited that it is not the business of the court to enquire why the Defendant did not participate in the proceedings against him and he relied on the following authorities: ***OMOBUWA V. OWHOFATSHO (2006) 5 NWLR (PT 972) PG 40 AT 66; NWANKUDU VS. IBETO (2011)2 NWLR (PT 1231) PAGE 209, RATIO 4;*** and ***NEWSWATCH COMMUNICATIONS LTD VS. ATTA (2006) 12 NWLR (PT 993) PG 144, RT 6 AT PG 150 & RT 11 AT PG 152***.

Counsel submitted that it is settled law that when a Claimant leads evidence and the Defendant does not, the onus of proof on the Claimant to establish the facts pleaded would be discharged on minimal proof. That in effect, the Defendant is deemed to have accepted the pleadings and the evidence led by the Claimant and he relied on the case of ***ESEGBE VS AGHOLOR (1993)9 NWLR (PT 316) PG 128***.

He submitted that in the instant case, the Claimant gave a detailed and unchallenged evidence of his root of title to establish his ownership of the disputed parcel of land. He emphasized that when the evidence given by a party in any proceedings is not challenged by the other party who had the opportunity to do so, the court can act on the unchallenged evidence before it. He said that the Claimant gave uncontroverted evidence of the deliberate, forceful and unlawful trespass into the said parcel of land by the Defendant.

In conclusion, he urged the Court to grant the reliefs sought as contained in the Claimant's extant pleadings.

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 the following documents of title:

i. ***Exhibit A- Deed of Transfer dated 14th day of March, 2018;***
ii. ***Exhibit B- Photocopy of Deed of Transfer dated 20th day of October, 1993;***
iii. ***Exhibit B1- Photocopy of Oba's Approval Paper dated 20th day of December, 1972;***
iv. ***Exhibit F- Photocopy of Survey Plan No: CSE/20/2; and***
v. ***Exhibit G- Litigation Survey Plan No: JAO/ED2022/10L dated the 5th day of February, 2022.***

The Claimant's main document of title is the Deed of Transfer which was admitted as Exhibit A. However, 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. Ibafon 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 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 has been in undisturbed possession of the land, exercising various acts of possession and ownership over same until the Defendant forcefully trespassed thereon sometime in April, 2019.

The uncontroverted evidence of the Claimant's peaceful and undisturbed possession of the land amounts 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.***

It is an established principle of law that where there is acceptable evidence that the party in possession had paid money before being put in possession and had remained in undisturbed possession, he has acquired an equitable interest which cannot be defeated by a subsequent purchaser of the legal Estate. See: ***OBIJURU V. OZIMS (1985) LPELR-2173(SC) (PP. 56-57 PARAS. F);*** and ***AJAYI V. OSUNUKU & ORS (2008) LPELR-8332(CA) (PP. 28-32 PARAS. E).*** Furthermore, exclusive possession gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrongdoers except the person who can establish a better title. See the case of ***EKRETSU & ANOR V. OYOBEBERE & ORS (1992) LPELR-1099(SC) (PP. 27-28 PARAS. F).***

From the foregoing, the Claimant is entitled to the first relief for a declaration that he is the rightful person entitled to apply and be granted Statutory Right of Occupancy in respect of the land in dispute.

On the claim for the sum of N5,000, 000:00 (Five 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 the Defendant forcefully trespassed on the said land sometime in April, 2019. However, he did not elaborate on the extent of destruction or losses occasioned by the Defendant's trespass. Going through the entire gamut of the Claimant's evidence, there is no evidence of the quantum of damages suffered from the alleged acts of trespass by 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 to 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).***

However, where the Claimant did not lead sufficient evidence on the extent of injury or losses suffered, 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***. Consequently, the Claimant is entitled to nominal damages.

On the relief for an order directing the Defendant to vacate and remove whatever structures he may have built on the Claimant's land without his consent and authority, it is settled law that where there is trespass or encroachment or erection of an illegal structure on a person's land, the proper order to make is for the illegal structure to be removed. See the cases of ***DANJUMA V. NASIRU & ANOR (2015) LPELR-25922(CA) (PP. 21 PARAS. C);*** and ***HASSAN V. HAKIMI & ORS (2020) LPELR-52792(CA) (PP. 26 PARAS. C).***

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 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:

i. ***A DECLARATION that the Claimant is the rightful person entitled to apply and be granted Statutory Right of Occupancy in respect of all that piece or parcel of land measuring 100ft by 200ft (One Hundred Feet by Two Hundred Feet) situate at Princess Ighiwiyisi Eweka's Estate, Ogba Road, Benin City, now No. 50, Gapiona Street, G.R.A, Benin City, bounded by Survey Plan No: CSE/20/2 wherein the Defendant trespassed on the said land measuring 100ft by 200ft within the jurisdiction of this Honourable Court;***
ii. ***A DECLARATION that the trespass by the Defendant on the Claimant's land is wrong and done without the consent and authority of the Claimant;***

iii. The sum of N1, 000,000.00 (One Million Naira) as general damages from the Defendant for trespass and for activities inconsistent with the Claimant's right and interest therein;

iv. An Order directing the Defendant to vacate and remove whatever structures he may have built on the Claimant's land without his consent and authority; and

v. AN ORDER of perpetual injunction restraining the Defendant, his agents, servants, privies and/or assigns from committing any further acts of trespass on the said land and from continuing to do anything inconsistent with the Claimant's rights and interest therein.

Costs is assessed at N200, 000.00 (Two Hundred Thousand Naira) in favour of the Claimant.

P.A.AKHIHIERO

JUDGE

07/03/2023

<u>COUNSEL:</u>

K.O.Owie Esq. ----------Claimant.

Unrepresented----------Defendant.

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