

**IN THE HIGH COURT OF JUSTICE**  
**OF EDO STATE OF NIGERIA**  
**IN THE UROMI JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO**  
**ON MONDAY**  
**THE 22<sup>ND</sup> DAY OF MAY, 2023.**

**BETWEEN:**

**SUIT NO. HCU/48/2011**

**CHIEF PETER UBAH .....CLAIMANT**

**AND**

**PAUL EBADAN.....DEFENDANT**

**JUDGMENT**

The Claimant commenced this suit by a writ of summons and statement of claim dated the 31<sup>st</sup> of October, 2011. The claim is for declaration of title to land, damages and injunction.

The Defendant filed a statement of defence and counter claim seeking the same reliefs as the Claimant. However, the extant pleadings in this suit are the 1<sup>st</sup> Further Amended Statement of Claim dated 16/05/2022, the 5<sup>th</sup> Amended Statement of Defence and Counter Claim dated 9/4/2018 and the Amended Reply to Statement of Defence and Defence to Counter Claim dated 18/01/2013.

In the course of the proceedings, the original Defendant died and he was substituted by the present Defendant. At the hearing, the claimant called 4 witnesses, tendered Exhibits A, B, C, D, E and F and closed his case.

The Claimant's case as can be gleaned from the evidence adduced at the trial is that his late father Chief George Amadi Ubah purchased the land in dispute from one Chief Ehonor Okoduwa of Uromi Kingdom (also known as Chief Sunday Omologbe Okodua) sometime in 1987 and it was evidenced by a memorandum of sale.

That in 1991, the Claimant's father purchased an additional piece of land contiguous to the first one from the same Chief Ehonor Okoduwa and the receipt of payment for the second piece of land was tendered in these proceedings and admitted as Exhibit D.

According to the Claimant, before the purchase, the land in dispute together with some other adjoining lands was vested in the holder of the Chieftaincy title of Ehonor of Uromi. He maintained that the said Chief Okoduwa was installed as the Ehonor of Uromi upon the demise of one Chief James Akaika Ebadan Obodo who was the father of the original Defendant in this suit. He said that since the original defendant was not readily available to step into his father's shoes, to avoid a vacuum, Chief Okoduwa acted as the Ehonor of Uromi from 1984 to 2010 when he died.

The Claimant alleged that it was in his capacity as the Ehonor of Uromi that Chief Okoduwa sold the land in dispute to his father, He alleged that he also sold other adjoining lands to several other persons without any challenge from anybody. According to him, Chief Ehonor Okoduwa exercised diverse acts of ownership over the lands in Idumu-Obodo Efandion Uromi, by transferring parts of same to numerous purchasers and also received compensation for land at Idumu-Obodo from Julius Berger Company during the construction of the Railway line linking Ajaokuta to Warri, in his capacity as Chief Ehonor of Uromi Kingdom.

The Claimant stated that upon purchase of the land in dispute, his father took possession and built a wall fence with an iron gate at the entrance. He said that the Claimant's father and his children cultivated the land, by planting annual crops which they harvested. That upon the demise of his father in 1997, the Claimant inherited the land as the eldest son of his father and continued to cultivate the land.

He said that he also permitted some artisans to utilise the front part of the land for their trade. That all these activities were carried on without any challenge until

sometime in the year 2011 when the original Defendant broke the lock on the gate and invaded the land.

In the course of the trial, the Defendant and his counsel abandoned the case and after the Claimant closed his case, the Defendant failed to lead any evidence in his defence of the suit or in proof of his Counter-Claim despite several opportunities that was afforded him.

Eventually, the Court foreclosed the Defendant and the matter was adjourned for final address. 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 final written address, the learned counsel for the Claimant, **Prof.A.O.O. Ekpu** formulated 4 issues for determination as follows:

- 1) *Whether the claimant's father (Chief Amadi Ubah) properly obtained title to the said piece of land in dispute;*
- 2) *Whether the transferor (Chief Ehonor Okoduwa) while he acted as Ehonor had sufficient right to transfer the land in dispute to the claimant's father;*
- 3) *Whether the Defendant is not estopped from laying claim to the land in view of the long possession and the various acts of ownership on the land in dispute by the Claimant and his predecessor in title; and*
- 4) *Whether the claimant is not entitled to the reliefs sought in this case.*

In his written address, the learned counsel argued issues 1, 2 and 3 together while issue 4 was argued separately.

### **ISSUES 1, 2 AND 3**

Arguing issues 1, 2 and 3 together, learned counsel submitted that where a party pleaded and relies on a particular root of title to land in dispute, he has a duty to prove same satisfactorily before his claim can be granted by the court and he relied on the case of ***Kano v. Maikaji (2013) ALL FWLR (pt 673) 1850 at 1869.***

He posited that the five ways of establishing title to a disputed land are as follows:

1. Traditional evidence

2. Production of title documents
3. Acts of possession
4. Acts of ownership
5. Possession of adjacent and connected land.

He referred the Court to the following authorities on the point: *ALHAJI OSENI OLANIYAN & 4 ORS V. CHIEF MRS. E.T. FATOKI (2014) ALL FWLR (pt 717) 703 at 723*; and *IDUNDUN V. OKUMAGBA (1976) 10 NSCC 445 or (1976) 9-10 Sc 227*.

He posited that in the instant case, it is an undisputed fact that the land in dispute was vested in the Ehonor of Uromi. He said that the Claimant's burden is lessened since both parties are claiming title from the same source. Therefore he maintained that the Claimant is not required to establish the origin of his vendor's title.

He said that once the Claimant has proved his own title, the burden shifts to the Defendant to disprove the Claimant's title and he relied on the cases of *ASHIRU V. OLUKOYA (2006) 11 NWLR (PT. 990) 1 (SC)*; and *AKOLEDOWO V. OJUBUTU (2012) 16 NWLR (PT. 1325) 1 (CA)*.

Counsel posited that in this case, the Claimant in establishing his title to the land in dispute pleaded and gave credible evidence of his root of title by purchase from Chief Ehonor Okoduwa and the purchase was evidenced by a deed of transfer and a receipt of payment tendered and admitted as **Exhibits "B" and "D"** respectively.

He said that the claimant went further to establish that the said Chief Ehonor Okoduwa was installed as the Ehonor of Uromi upon the death of the original Defendant's father who was not readily available to take up the position. That he led evidence of how Chief Ehonor Okoduwa acted as the Ehonor of Uromi from 1984 to 2010 when he died.

He said that from this point, the burden shifted to the Defendant to show that the Claimant did not properly acquire his title. He said that since the Defendant did not call any evidence, the Court is left with the Claimant's evidence which remains unchallenged and credible. He therefore urged the Court to accept and act on it.

Counsel submitted that the Claimant having established his title to the land in dispute by purchase, he has satisfactorily discharged the burden of proof placed upon him.

Furthermore, counsel submitted that the Claimant and his father's numerous acts of possession and ownership over a long period of time is further proof of his title to the land. He referred to the evidence before the court which disclosed how the Claimant exercised several acts of long possession and ownership over the land in dispute. He said that the Claimant's father fenced the entire land and put a gate on it. He referred to the evidence of the CW2, a building contractor who testified that the Claimant's father hired him to erect the fence. He said that the land was surveyed by the Claimant's father and they cultivated the land for many years without any challenge and granted permission to artisans to use the front part of the land.

Learned counsel submitted that with the above mentioned actions, the Claimant and his predecessor in title had both constructive and physical possession, which serves as a proof of title against the whole world and he cited the case of *Iseogbekun v. Adalakun (2013) ALL FWLR (pt 664) 168 at 199*.

#### **ISSUE 4:**

Arguing issue 4, counsel submitted that the position of the law is that the person who seeks an order of declaration of title to land, damages for trespass and injunction regarding a disputed land puts his title in issue and can succeed only on proving that he has a better title to the land than the Defendant and he relied on the case of *Olaniyan v. Fatoki (supra) at 715, Kano v. Maikaji (supra) at 1872*.

He submitted that going by his arguments on issues 1, 2 and 3, it is clear that the Claimant has established a better title to the land in dispute and therefore entitled to the reliefs sought in his statement of claim.

Furthermore, he submitted that the Claimant is entitled to general damages for the Defendant's acts of trespass and he relied on the case of *N.B. C. PLC V. UBANI (2014) ALL FWLR (pt 718) 803 at 827*. He said that when a Claimant has suffered some specific losses as to income in addition to general damages on account of the trespass, he can as well claim these specific losses by way of special damages. He said that in the instant case, the Claimant led evidence of trespass to his land by the Defendant.

He urged the Court to give appropriate weight to the unchallenged evidence of the Claimant in this case and grant his claims. He relied on the case of *IRIRI V. EHORHOBORE (1991) 2 NWLR (pt173) 252 at 255*, where the court was admonished to act on un-contradicted and unchallenged evidence. He also relied on the following decisions: *A.G. OGUN STATE V. COKER (1993) 9 NWLR (PT 316) 214 AT 235*, *ASAFA FOODS FACTORY V. ALRAINE (NIG. LTD.) (2002) NWLR (PT 781) 235 at 380*; *OKOEBOR V. POLICE COUNCIL & ORS. (2003) 6 MJSC 13*; and *NWADIKE V. IBEKWE (1987) 2 NSCC 1219*.

Finally, he urged the Court to grant the claims and dismiss the counter-claim.

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 lead any evidence to defend this suit. Thus, the evidence of the Claimant against him 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 the case of *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 since the Defendant filed a Counter-Claim against the Claimant, the two issues for determination in this suit are:

- (i) Whether the Claimant is entitled to the reliefs claimed in this suit; and*
- (ii) Whether the Defendant is entitled to the reliefs claimed in his Counter-Claim in this suit.*

I will now resolve the two issues seriatim.

**ISSUE 1:**

***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. Udeaaja*

*(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 some title documents as follows:

- (i) Deed of Transfer made on the 5<sup>th</sup> of January, 1987 between Ehonor Okoduwa and George Amadi Ubah which was admitted as Exhibit B;*
- (ii) Survey Plan No. LABD/115/89 showing the landed property of Chief George Amadi Ubah which was admitted as Exhibit C; and*
- (iii) Chief Ehonor Okoduwa's Receipt of payment of the sum of N1, 500 (One Thousand Five Hundred Naira) which was admitted in evidence as Exhibit D.*

The Claimant's main document of title appears to be the Deed of Transfer made on the 5<sup>th</sup> of January, 1987 between Ehonor Okoduwa and the Claimant's father, George Amadi Ubah which was admitted as Exhibit B.

It is evident that Exhibit B 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 on the point: *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.*

Again 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 B, *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 B, 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 upon purchase of the land in dispute, his father took possession and built a wall fence with an iron gate at the entrance. He said that his father and his siblings cultivated the land, by planting annual crops which they harvested. That upon the demise of his father in 1997, he inherited the land as the eldest son of his father and continued to cultivate the land. He said that he also permitted some artisans to utilise the front part of the land for their trade. He said that all these activities were carried on without any challenge until sometime in the year 2011 when the original Defendant broke the lock on the gate and invaded the land.

From the uncontroverted evidence of the Claimant, this evidence of carrying out some developments on the land amount to acts of possession which is one of the ways of proving title to land. This is further proof of the Claimant’s title. See: ***Section 35 of the Evidence Act, 2011*** and the case of: ***Alikor vs. Ogwo (2010) 5 NWLR (Pt.1187) 281 at 312.***

From the foregoing, I hold that the Claimant is entitled to a grant of the right of occupancy to 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 did not state the value of the losses occasioned by the Defendant's trespass. Neither did he lead any evidence of the quantum of losses he suffered from the acts of the Defendant. However, it is usual in cases such as this, where the Claimant is unable to quantify his losses, for the Court to award nominal damages.

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 or trespass on the Claimant's land.

On the whole, I hold that issue one is resolved in favour of the Claimant.

**ISSUE 2:**

***WHETHER THE DEFENDANT IS ENTITLED TO THE RELIEFS CLAIMED IN HIS COUNTER-CLAIM IN THIS SUIT.***

In his Counter-Claim, the Defendant counter-claimed against the Claimant seeking reliefs for declaration, perpetual injunction and damages for trespass on the same land. I am of the view that since it is the same land the Defendant is laying claim to in his counter-claim; I cannot give title of the land in dispute to the Claimant and turn round to uphold the Defendant's counter claim.

In *UWAGBOE OSAGIE & ORS VIGBINOSUN OBAZEE & ORS (2013) LPELR - 21994 (CA)* the Court of Appeal, while pronouncing on whether a counter-claim would fail where the main claim succeeds held, per LOKULO-SODIPE at pages 44 - 45 paragraphs F - E as follows: - *"As already stated by me, Appellants are very correct regarding their analysis of a counter-claim. The Appellants would however appear to have seriously misapprehended the manner of a trial in an action with a counter claim to the extent that they would appear to believe that evidence adduced in a case with a counter claim is compartmentalized or categorized into "evidence in the main suit" and "evidence in the counter claim" as it were. All that is required in a trial on pleadings is for the trial Court to identify the matters on which parties have joined issues and call for resolution and use the evidence adduced before it on the said issues... to resolve the issues in dispute...Therefore since the evidence adduced in the main claim is upheld then it follows that the counter-claim (though a separate claim that can stand on its own) is left bereft of evidence to support it. Therefore it is my finding on this issue that the learned trial Judge was right in dismissing the Appellants' counter claim."*

The law is that where the facts are intertwined and interwoven as regards a claimant's action and a defendant's counter claim, the success of the claimant's claim would mean the failure of the defendant's counter claim. See: *Aunam (Nig.) Ltd Vs UTC (Nig) Ltd (1995) 4 NWLR (Pt 392) 753, Unokan Enterprises Ltd Vs Omuvwie (2005) 1 NWLR (Pt. 907) 293, 315 at 316, Ago Vs Federal Mortgage Finance Ltd (2013) LPELR 22820(CA), Digital Security Technology Ltd Vs Andi (2017) LPELR 43446(CA), Ebibokofie Vs Tume (2018) LPELR 45620(CA), Iyua Vs Paul (2019) LPELR 47226(CA), Rikichi Vs Gambo (2019) LPELR 47676(CA).*

Sequel to the foregoing, I am of the view that it would be a worthless exercise to consider the merits of the Defendant's counter-claim at this stage. The counter-claim is deemed to have failed and it is accordingly dismissed. Issue 2 is therefore resolved in favour of the Claimant.

Having resolved the two issues for determination in favour of the Claimant, I hereby dismiss the Counter-Claim of the Defendant and grant the Claimant's Claims as follows:

- a. A Declaration that the Claimant is the one entitled to a grant of the right of occupancy over the land in dispute;*

- b. The sum of N1,000,000.00 (One Million Naira) as damages for trespass in that the Defendant sometime about October 2011 broke into the said land while in the peaceable possession of the Claimant without his consent and destroyed the lock on the gate; and*
- c. An order of perpetual injunction restraining the Defendant, his agents and privies from further entering upon or trespassing on the land or in any other manner interfering with the Claimant's interests therein.*

*Costs is assessed at N100, 000.00 (One Hundred Thousand Naira) in favour of the Claimant.*

**P.A.AKHIHIERO**

**JUDGE**

**22/05/2023**

**COUNSEL:**

*Prof. A. O.O. Ekpu-----Claimant.*

*Unrepresented-----Defendant.*





