

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO
ON TUESDAY
THE 24TH DAY OF OCTOBER, 2023.

BETWEEN:

SUIT NO. B/1111/2021

MR. LAWSON IGHAGBON CLAIMANT

AND

MR ODIRI OFUNABA..... DEFENDANT

JUDGMENT

The Claimant instituted this suit against the Defendant vide a writ of summons filed on the 30th of November, 2021 claiming as follows:

- 1) ***A DECLARATION that the Claimant is the Bonafide Owner and the person entitled to the Customary and Statutory Right of Occupancy in respect of ALL THAT piece or parcel of land measuring approximately 50ft by 150ft in Abuttal and Dimensions lying and situate at Obazagbon Community, Oredo Local Government Area, Iyekogba, Benin City having inherited same from his late father;***
- 2) ***A DECLARATION that the Defendant's acts of entry upon the land described above without the consent and/or authority of the Claimant amounts to trespass;***
- 3) ***AN ORDER OF PERPETUAL INJUNCTION restraining the Defendant, his workers, representatives, agents, privies and/or their assigns, servants etc. however called from further entry and/or development of any part of the land the subject matter of this suit; and***

4) AN ORDER mandating the Defendant to pay the Claimant jointly and severally the sum of N500, 000.00 (Five Hundred Thousand Naira) being General Damages for his acts of trespass on the land and for cost.

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.

At the hearing, the Claimant testified and called one witness. The Claimant's case is that the parcel of land measuring 50ft by 150ft which is the subject matter of this suit, lying and situate along Obazagbon/Irhirhi Road, Obazagbon community, forms part of the larger family land measuring 100ft by 200ft which belonged to one late Enoronghe Ighagbon, the Claimant's grandfather.

The Claimant maintains that the Enoronghe Ighagbon family owns the land having had possession of the land ever before the Claimant was born. That it was on the strength of this that the Obazagbon community formally issued to the Claimant an allocation/approval document in respect of the land in the year 2001. The Obazagbon community allocation document dated 15th June, 2001 was tendered and admitted as Exhibit "A" at the trial.

The Claimant stated that he grew up to meet his father, late Mr Anthony Ighagbon already in possession of the land with some cash crops such as rubber plantation, Kolanut trees and palm trees on it. He alleged that his family also planted cassava and yams on some part of the land before the demise of his father.

He alleged that upon the demise of his father on the 25th of November 1980 he continued to be in possession of the family land without any adverse claim from anybody in the community.

He said that in 2008, he had a serious accident which left him bedridden for several years while he was taken to several healing and bone-setting homes outside Edo State for treatment.

He alleged that while he was away, the Defendant who is a non-indigene residing in the community started farming on the land without his consent or permission. He said that the elders in the community informed the Defendant that the land belongs to the Claimant who was then on treatment and the Defendant informed the elders that he was only making use of the land by farming on it without any intention of depriving the Claimant of the ownership of the land.

The Claimant alleged that upon his return in 2016, he saw that the Defendant had planted cassava on the land and constructed a rickety shop where he was selling provisions. Upon questioning him, the Defendant informed the Claimant that he had purchased the land from an unknown person.

The Claimant reported the matter to the Odiowere and Elders of Obazagbon community who invited both parties for a meeting but the Defendant refused to

attend the meeting and attempted to commence building on the land but the elders stopped him. The Claimant also made a report to the police before he instituted this suit against the Defendant.

Upon the conclusion of the Claimant's evidence, the matter was adjourned for cross examination and the Court ordered that fresh hearing notice should be issued and served on the Defendant. The Hearing notice was served on him but he failed to appear in the Court so the Court foreclosed him and the suit was adjourned for Defence. However, the Defendant never showed up in Court to defend the suit so the matter was adjourned for final address.

In his final address, the learned counsel for the Claimant, *F.I. Scott-Iyamu Esq.* formulated a sole issue for determination as follows:

“Whether from the totality of the evidence, the Claimant is not entitled to the reliefs sought.”

Arguing the sole issue for determination, learned counsel submitted that before a claimant can succeed in a land case, it must be shown by evidence that the preponderance of evidence tilts in his favour.

She submitted that in the instant case, the Claimant has proved his case on the balance of probability.

Learned counsel enumerated the five ways of proving title to land as laid down in the classical case of *IDUNDUN V. OKUMAGBA (1976) 1 ACLC PAGE 137 OR 9-10 SC 227.*

She referred the Court to *paragraphs 2,3,4,5 and 6* of the Claimant's statement on oath where he stated that his family has been in long possession of the parcel of land and how ownership of the land eventually devolved on him by inheritance. She said that in a bid to properly document the title to the land, the Claimant applied for the formal allocation and documentation of the land as a building plot in 2001 which was duly approved by the elders of the community. He said that the formal approval given to the Claimant by the issuance of the allocation document (*Exhibit A*) would also enable the Claimant to transfer a portion to any prospective buyer in the event that he wants to sell.

He posited that there is evidence from the deposition of the Claimant that his family was in undisturbed possession of the said land for a long time until 2008 when he had an accident and he referred to paragraphs 7 and 8 thereof.

Furthermore, he posited that it is clear that the Defendant came into the land and started disturbing the possession of the Claimant despite the warning by the elders. Moreover, he posited that the Defendant who is not an indigene of the community subsequently left the community and has been on and off. He referred to the evidence of the *CWI (Moses Omoregbe)* one of the elders in the community

who testified to corroborate the fact that the parcel of land belongs to the family of late Enoronghe Ighagbon before same devolved on the Claimant.

Learned counsel submitted that the evidence of the Claimant which was not challenged by the Defendant by way of cross-examination is good evidence which is deemed admitted and thus should be relied upon by the Court. See the case of **AJAOKUTA STEEL CO. LTD VS. ROLE (2011) ALL FWLR (PT 563) 1931 C.A.**

She urged the Court to rely on the evidence of the Claimant together with the document tendered in this case to grant the relief sought by the Claimant as contained in the Statement of 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 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 his Obazagbon community allocation document dated 15th June, 2001 which was admitted as Exhibit "A" at the trial. Thus the Claimant's main document of title is the community allocation document. It is evident that Exhibit "A" is not a registered legal instrument so it cannot convey legal title to the land.

The said Exhibit "A" is similar to an Oba's Approval, which need not be registered. It is settled law that a grant of land by the Oba of Benin based on the Oba's approval of such a grant of land to a grantee does not require any registration at the Lands Registry in Benin City to be valid. See the cases of *Amayo V. Erinmwingbovo (2006) 11 NWLR (Pt. 992) 669 @ p. 682; and DR. DANIEL AMU & ANOR v. K.S. OKEAYA-INNEH ESQ. SAN (2021) LPELR-55660(CA).*

At the trial, the Defendant did not adduce any evidence to challenge the validity of Exhibit "A". In the absence of any challenge to Exhibit "A", I hold that it will suffice to establish the Claimant's root of title to the land in dispute.

On acts of ownership and possession, the Claimant led unchallenged evidence to prove that he grew up to meet his father late Mr. Anthony Ighagbon already in possession of the land with some cash crops such as rubber trees, kolanut trees and palm trees on it. He testified that upon the demise of his father, he continued to be in possession of the family land without any adverse claim from anybody in the community.

From the uncontroverted evidence of the Claimant, this evidence of 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 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 claim for the sum of N500, 000.00 (Five Hundred Thousand Naira) as general damages for his acts of trespass on the land, 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 he discovered that the Defendant planted cassava crops on the land and erected a rickety shop where he was selling provisions. The Claimant's evidence remains unchallenged and I have no reason to disbelieve him. Clearly, the acts of the Defendant amount to trespass. However, the Claimant did not give details of what he suffered or lost as a result of the Defendant's acts of trespass.

However, the law is well settled that trespass is actionable per se. This means that damages for trespass is not hinged on proof of 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).*** For trespass however the

quantum is usually nominal. The rationale for this is predicated on the fact that a Claimant is entitled to damages for trespass even if no damages or loss is caused to him and if any damage or loss is caused to him as a consequence of the trespass; same is recoverable under special damages properly pleaded and proved. See *AKAOLISA V AKAOLISA (2014) LPELR - 24148 (CA)*; and *OSUJI V ISIOCHA (1989) 3 NWLR PT 111, 623 AT 634*.

In the instant case, the Claimant did not claim special damages neither did he plead or prove special damages. In the event 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*. From the evidence adduced, I am of the view that in the light of present economic realities, the sum of N500, 000.00 (Five Thousand Naira) claimed as general damages is quite reasonable.

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:

- 1) ***A DECLARATION that the Claimant is the Bonafide Owner and the person entitled to the Customary and Statutory Right of Occupancy in respect of ALL THAT piece or parcel of land measuring approximately to 50ft by 150ft in abuttal and dimensions lying and situate at Obazagbon Community, Oredo Local Government Area, Iyekogba, Benin City having inherited same from his late father;***
- 2) ***A DECLARATION that the Defendant's acts of entry upon the land described above without the consent and/or authority of the Claimant amounts to trespass;***
- 3) ***AN ORDER OF PERPETUAL INJUNCTION restraining the Defendant, his workers, representatives, agents, privies and/or their assigns, servants etc however called from further entry and/or development of any part of the land the subject matter of this suit; and***
- 4) ***AN ORDER mandating the Defendants to pay the Claimant jointly and severally the sum of N500, 000.00 (Five Hundred Thousand Naira) being General Damages for his acts of trespass on the land and for costs.***

P.A.AKHIHIERO
JUDGE
24 /10/2023

COUNSEL:

F.I. Scott-Iyamu Esq. -----Claimant.

Unrepresented-----Defendant.

