

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 30TH DAY OF JANUARY, 2024.

BETWEEN:

SUIT NO. B/1181/2021

BARR (MRS.) F.A EDOKPAYI

**(Suing for and on behalf of the -----CLAIMANT
Administrators of the Estate of late
Honourable Justice M.I. Edokpayi)**

AND

PERSONS UNKNOWN ----- DEFENDANTS

JUDGMENT

The Claimant instituted this suit against the Defendants vide a Writ of Summons and Statement of Claim filed on the 17th of December, 2021 wherein she claimed as follows:

- 1. An order that the parcel of land measuring 200ft by 200ft lying and located at the Government layout, Evboriaria marked as plot 136, covered by a certificate of occupancy registered as No. 29, page 29 Volume B 203 at the lands Registry Office of Edo Geographic Information service, EDOGIS is***

the property of the late Honourable chief Judge of Edo State. Hon. Justice M.I. Edokpayi and now the Property of his Estate.

- 2. A declaration that the Persons unknown/Defendants are trespassers.*
- 3. An order that the Persons unknown/Defendants should remove all their structures on the land.*
- 4. N15, 000,000.00 (Fifteen Million Naira) General damages for trespass and for altering the character the Claimant intend to put the land.*
- 5. An order of perpetual injunction restraining the persons unknown/Defendants, their agents, servants, privies cohorts or persons claiming through them or in trust for them from further trespassing, erecting any building or structure on the land.*

The Writ of Summons, Statement of Claim and other accompanying processes were served on the Defendants but they did not put up any appearance in this suit neither were they represented by any counsel despite several hearing notices that were served on them. In essence, the suit was undefended.

At the hearing, the Claimant testified that she is the wife of Honourable Justice M.I. Edokpayi who was a former Chief Judge of Edo State (now deceased).

She stated that the land in dispute measuring 200 feet by 200 feet lying and situate at the Government Layout Evboriaria, Benin City now particularly located at Otubu Lucky Street, Evboriaria, Benin City, belonged to her late husband.

According to her, sometime in 1992, the deceased applied to the government of Edo State through Edo Development and Property Authority (EDPA) for allocation of a parcel of land in the Government layout at Evboriaria and was allocated the said parcel of land measuring 200 feet by 200 feet particularly delineated as Plot 136 government layout, Evboriaria.

She alleged that the approval which was given to her husband for the land could not be found after his death and subsequent relocation from his official residence.

She said that the land was surveyed and demarcated with beacons blocks by the Surveyor General and her husband spent the sum of N200, 000.00 (Two Hundred Thousand Naira) to bulldoze the land. That after the bulldozing, the official of the Ministry of lands and Surveys re-established the positions of the beacons on their appropriate places using the Master Plan of the area.

Thereafter, her husband applied for and obtained a Certificate of Occupancy over the land in 1997 which was registered as No. 29 at Page 29 in Volume B/203, Benin now kept in EDOGIS Lands Registry at Benin City, Edo State.

At the trial, the Claimant tendered some of the relevant documents relating to the land as follows: the certificate of occupancy over the land which was admitted as Exhibit "A"; Exhibit "A2" is the master plan of the area; Exhibit "C1" to "C3" are the pictures of the buildings being erected by the Persons Unknown; and Exhibit D is the certificate of compliance with S. 84 (2) of the Evidence Act on the tendering of electronically generated evidence.

She alleged that upon the sudden demise of her husband in November, 2009 one Mr. Edward Idahosa and Osarobo Idahosa of Evboriaria Community started allocating the land to persons unknown.

That in 2010, members of the family sued her and some others over the estate of her husband in Suit No: B/14/2010 at the High Court, Benin City and the judgment in that suit was delivered in July, 2021. A copy of the judgment was admitted as Exhibit "B".

She alleged that the persons unknown took advantage of the death of her husband and the long litigation to continue to trespass on the land. That upon a subsequent inspection of the land she met some uncompleted buildings on the land built by persons unknown and she took photographs of the land and the structures on it. The pictures were admitted as Exhibits "C" to "C3" at the trial.²

She alleged that all efforts to know the identity of the persons building on the land proved abortive.

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 Defendants. The Hearing notice was served on them but they failed

to appear in the Court so the Court foreclosed them and the Claimant closed his case. Eventually, the matter was adjourned for final address.

In his final written address, the learned counsel for the Claimant, *A.M. Aleogho Esq.* formulated a sole issue for determination as follows: ***“Whether the Claimant proved the reliefs sought and entitled to judgment.”***

Arguing the sole issue for determination, learned counsel enumerated the five ways of proving ownership of land in Nigeria and he referred to the case of ***IDUNDUN & ORS V DANIEL OKUNMAGBA (2002) 20 WRN AT 127 AT 142-144 LINES 25-25]***.

He said that in the instant case, the Claimant relied on proof by the production of documents of title and he tendered Exhibits A, A1, A2 & B in support of her claim to ownership of the parcel of land. He said that the claim was served on the Defendants by substituted service and numerous hearing notices were also served on them but they failed to file a defence to the claim or attend court to defend the claim of the Claimant.

He submitted that in any proceedings where the claim was not challenged as in this case, it is open to the Court to act on the unchallenged evidence before it and he referred to the following cases: ***SUNMONU OLOHUNDE & ANOR V PROFESSOR S.K ADEYOJU (2000)79 LRCN 2297; ISAAC OMOREGBE V DANIEL LAWANI (1980) 4SC 108 AT 117; and ODULAJU V HADDAD (1973)11 SC 35.***

Furthermore, counsel submitted that where an adversary fails to adduce evidence to put on the other side of the imaginary scale of justice, minimum evidence adduced by the other side would suffice to prove its case and he referred to the following cases: ***BURAIMOH V BAMGBOSE (1989) 3 NWLR Pt (109) 352; and NWABUOKU V OTTIH (1961) 2 SCNLR 232 AT 2090.***

He therefore urged the Court to accept the unchallenged and un-contradicted evidence of the Claimant as the true version of the claim.

He posited that the Claimant evidence to show that the Defendants have erected structures on the land thereby altering the nature and character the Claimant intends to put the land. He referred to Exhibits C-C₃ tendered by the Claimant which are the pictures of the structures erected on the land by the Defendants. He said that the Defendants failed to challenge this evidence at the trial.

On the issue of general damages, he submitted that general damages are those which have been suffered by a party which the law will presume to be the direct natural or probable consequence of the acts of the Defendants. He said that the Claimant averred that the Defendants trespassed into her land and erected structures on it and one of the reliefs of the Claimant is for an order for the Defendants to remove their structures from the land. He pointed out that the Claimant will expend enormous sums to remove the structures/buildings which the Defendant willfully erected on the Claimant's land if the Court grants the order for the Defendants to remove the structures/buildings on the land. He maintained that a trial Court has discretionary powers to award general damages and when exercising such discretionary powers it has the duty to calculate what sum of money will be reasonably awarded in the circumstances of the case and he referred to the cases of: *TAYLOR V OGHENEOVO (2012) 13NWL (Pt. 136) 46*; and *GARBA V KUR (2003) II NWLR 831*.

He therefore urged the Court to hold that the Claimant successfully proved the reliefs sought and resolve the sole issue in the favour of the Claimant.

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 Defendants 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 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 the case of *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 means of proof, to wit: proof by the production of documents of title.

On the proof by the production of title documents, the Claimant tendered a Certificate of Occupancy over the land which was admitted as Exhibit “A” and Exhibit “A2” which is the master plan of the area.

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, the Defendants did not adduce 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.

Next, on the declaration that the unknown Defendants are trespassers, 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 she was in exclusive possession of the land in dispute before the Defendants encroached on the land. Thus, the disturbance of the Claimant's exclusive possession by the 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 Defendants, their agents, privies or servants from any further acts of trespass on the Claimant's land.

On the relief for an order that the unknown Defendants should remove all their structures on the land, it is settled law that where there is a trespass or encroachment or 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).**

Lastly on the order for the award of ₦15, 000,000.00 (Fifteen Million Naira) General damages for trespass, it is settled law that 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.

At the trial, the Claimant testified of how upon an inspection of the land she met some uncompleted buildings on the land built by the unknown Defendants and she took photographs of the land and the structures on it which were admitted as Exhibits “C” to “C3” at the trial. Furthermore, in his written address, the learned counsel for the Claimant pointed out that the Claimant will expend enormous sums of money to remove the structures which the Defendants unlawfully erected on the Claimant’s land if the Court grants the order which they seek.

I agree entirely that the Claimant will expend a lot of funds to demolish the structures and evacuate the debris from the land. She is therefore entitled to some reasonable compensation to cover all these expenses. Generally the trial court has discretion as to the quantum of damages it would award in a claim of damages for trespass. 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 general damages to compensate the Claimant.

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:

- 1. An order that the parcel of land measuring 200ft by 200ft lying and located at the Government layout, Evboriaria marked as plot 136, covered by a certificate of occupancy registered as No. 29, page 29 Volume B 203 at the lands Registry Office of Edo Geographic Information service, EDOGIS is the property of the late Honourable Chief Judge of Edo State. Hon. Justice M.I. Edokpayi and now the Property of his Estate;***
- 2. A declaration that the Persons unknown/Defendants are trespassers;***
- 3. An order that the Persons unknown/Defendants should remove all their structures on the land;***
- 4. ₦3, 000,000.00 (Three Million Naira) General damages for trespass and for altering the character the Claimant intend to put the land; and***
- 5. An order of perpetual injunction restraining the Persons unknown/Defendants, their agents, servants, privies cohorts or persons***

claiming through them or in trust for them from further trespassing, erecting any building or structure on the land.

The Defendants shall pay the sum of ₦200, 000.00 (Two Hundred Thousand Naira) to the Claimant as costs.

P.A.AKHIHIERO
JUDGE
30 /01/2024

COUNSEL:

A.M. Aleogho Esq.-----Claimant.

Unrepresented----- Defendants.